Parliamentary Assembly
Assemblée parlementaire
https://pace.coe.int

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

**Doc. 15619**
26 September 2022

# The honouring of membership obligations to the Council of Europe by Hungary

**Report**[1]
Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)
Co-rapporteurs: Mr George PAPANDREOU, Greece, Socialists, Democrats and Greens Group, and Mr Eerik-Niiles KROSS, Estonia, Alliance of Liberals and Democrats for Europe

*Summary*

The situation of Hungary is unique among Council of Europe member States and contemporary democracies, namely the undisputed exercise of power by the same coalition which, since 2010, has enjoyed almost continuously a two-thirds majority. This has led to reduce the efficiency of the system of checks and balances and strengthened the ruling coalition's influence on State bodies and key independent institutions. In addition, the current electoral framework does not ensure a level playing field conducive to fair elections

Questions pertaining to the rule of law and democracy raised by the Parliamentary Assembly since 2013, including the excessive concentration of powers, have remained largely unaddressed. The widespread use of cardinal laws, the imbalance of powers between the judicial bodies and, more recently, the use of special legal orders or the creation of "public interest foundations" are of concern.

The Monitoring Committee concludes that the cumulative effects of the measures that negatively impact the independence of the judiciary, the situation of media, transparency and accountability of State institutions, overall undermine the functioning of democratic institutions. It therefore invites the Assembly to use the means at its disposal to closely follow the developments with regard to the functioning of democratic institutions and the rule of law in Hungary.

1. Assembly decision. Reference to committee: Reference 4446 of 12 April 2019.

**Contents** **Page**

A. Draft resolution ..... 3
B. Explanatory memorandum prepared by Mr George Papandreou and Mr Eerik-Niiles Kross, co-rapporteurs ..... 8
1. Introduction ..... 8
2. Background information and scope of report ..... 9
2.1. Migration issues ..... 12
2.2. Gender equality issues ..... 14
2.3. Freedom of association, academic freedom and the situation of NGOs ..... 17
3. Functioning of democratic institutions: good governance issues ..... 20
3.1. Background information on the political system in Hungary ..... 20
3.2. Electoral law and the election environment ..... 21
3.3. Recent political developments: parliamentary elections of 3 April 2022 ..... 22
3.4. Amendment of the Fundamental Law through a special legal order ..... 24
3.5. Ensuring transparency of political processes and tackling corruption ..... 27
4. Media situation ..... 34
4.1. The media situation, a persistent concern ..... 34
4.2. Some background ..... 35
4.3. Topics of concern ..... 35
4.4. Possible impact of European Union pressure ..... 41
4.5. The media during the 2022 parliamentary elections ..... 42
5. Independence of the judiciary ..... 43
5.1. A long-standing concern ..... 43
5.2. Some background ..... 44
5.3. Topics of concern ..... 44
5.4. Recent changes introduced in the judicial system ..... 48
6. Concluding remarks ..... 51

## A. Draft resolution[2]

1. Hungary joined the Council of Europe on 6 November 1990 and has been an active member State of the Organisation ever since. It was the first of the former communist countries to ratify the European Convention on Human Rights (ETS No. 5, "the Convention") in 1992 and subsequently has signed and ratified 94 Council of Europe treaties. Hungary exercised, for the second time since joining the Organisation, the Chairmanship of the Committee of Ministers from May to November 2021. It actively promoted, *inter alia*, the effective protection of national minorities issues and discussions on challenges related to digitalisation and artificial intelligence, which culminated with the formal approval of the Second Additional Protocol to the Convention on Cybercrime (ETS No. 185, 2001, "Budapest Convention") on enhanced co-operation and the disclosure of electronic evidence (CETS No. 224) by the Committee of Ministers on 17 November 2021.

2. The Parliamentary Assembly has closely followed Hungary's honouring of its Council of Europe membership obligations since 2013. In Resolution 1941 (2013), it expressed its deep concern about "the erosion of democratic checks and balances as a result of the new constitutional framework in Hungary" that had introduced "excessively concentrated powers, increased discretionary powers and reduced both the accountability and legal oversight of numerous government institutions and regulatory bodies in Hungary". Although the Assembly decided not to open a monitoring procedure in respect of Hungary at that time, it resolved to closely follow the situation in Hungary. In subsequent resolutions, including Resolution 2203 (2018) adopted in the framework of the discussion on the 2018 periodic review report on Hungary, the Assembly has continued to follow developments in the country.

3. Since its accession to power in 2010, the coalition of the Hungarian Civic Alliance (Fidesz) and the Christian Democratic People's Party (KDNP) has won four consecutive parliamentary elections and enjoyed, nearly continuously, a two-thirds parliamentary majority, which constitutes a unique situation among Council of Europe member States and contemporary democracies.

4. Since the adoption of the Fundamental Law (which is the official name of the new Hungarian Constitution) in 2011, the European Commission for Democracy through Law (Venice Commission) has expressed serious concerns about the impact of cardinal laws requiring two-thirds majorities on issues that are usually decided by simple majority and which should be left to the ordinary political process. The wide use of cardinal laws therefore impacts the "functionality of a democratic system" and cements the political preferences and the country's legal order. It also undermines the ability of the parliament to adapt to new conditions and face new challenges within society in the future.

5. In addition, the safeguards foreseen in the Constitution – with qualified majorities designed to require the search for a broad agreement between the majority and the opposition on key issues – become inefficient in cases where a ruling coalition enjoys a two-thirds majority. This is in particular the case when appointing the highest judicial officials (notably members of the Constitutional Court, the President of the Supreme Court (Curia) and the President of the National Office for the Judiciary (NOJ)) or adopting constitutional changes (11 since 2010). This situation severely restricts political pluralism – which is the hallmark of a democratic system – that should be embedded in the political system and State institutions.

6. The Assembly notes the valuable contribution of the Venice Commission, which has issued 23 opinions on Hungary since 2011, assessing the compliance of the Hungarian constitutional, legal and electoral framework with Council of Europe standards. The Assembly encourages the Hungarian authorities to pursue their co-operation with Council of Europe monitoring bodies and to implement their recommendations.

7. A two-thirds majority was once again achieved by the ruling coalition in the April 2022 parliamentary elections. This was done with 54% of the constituency and 52% of the party-list votes. Under these circumstances, it is incumbent on the authorities to ensure that the principles governing the proper functioning of democratic institutions are respected and safeguarded in good faith, including through effective checks and balances, meaningful dialogue with the opposition and co-operation with civil society organisations.

8. Hungary, like all countries, has had to face the Covid-19 pandemic. In recent months, it has also had to tackle the consequences of the Russian aggression in neighbouring Ukraine. The Assembly commends the people of Hungary for the great solidarity shown in the handling of the mass arrival of refugees from Ukraine since February 2022. The Assembly welcomes the decision of the authorities to allow persons fleeing the war and holding Hungarian citizenship to have access to the benefits provided to holders of temporary protection. However, it shares the concerns of the Council of Europe Commissioner for Human Rights concerning the situation of third country nationals and stateless persons excluded from this scheme.

---

2. Draft resolution adopted by the Committee on 14 September 2022.

9. The Assembly is also concerned that the country has been ruled under a special legal order since 2020. The parliament notably adopted, on 24 May 2022, the Tenth (constitutional) Amendment, allowing the government to trigger a "state of danger" in "cases of war or humanitarian catastrophes in neighbouring countries", following the outbreak of war in Ukraine. The Assembly recalls that the use of special legal orders must be restricted to what is strictly necessary, proportionate and must be limited in time. It also stresses that parliamentary oversight, political deliberations involving all political forces in parliament and proper checks and balances are crucial in times of crisis.

10. The Assembly recalls the human rights issues raised in its previous resolutions related to policies and developments in the fields of migration, gender equality, academic freedoms, and the situation of LGBTIQ people. It welcomes the revocation of the disputed Act on transparency of organisations receiving support from abroad (Lex NGO) in April 2021, but the recent fines imposed on non-governmental organisations for their actions against the Child protection referendum could have a chilling effect on civil society organisations. Recalling its Resolution 2203 (2018), and Resolution 2417 (2022), the Assembly strongly encourages the Hungarian authorities to improve the standards in all these fields in light of the opinions of the Venice Commission, the case law of the European Court of Human Rights and the recommendations of the Commissioner for Human Rights. The Assembly will continue to follow these issues closely.

11. *In the field of elections*:

11.1. With respect to the April 2022 parliamentary elections, the Assembly notes that, according to the Office for Democratic Institutions and Human Rights (ODIHR), "the electoral legal framework provides an adequate basis for the conduct of democratic elections but contains a number of omissions and key provisions that fall short of international standards and obligations, undermining its effectiveness and at times leading to legal uncertainty, mostly related to campaign rules and provisions for a level playing field". ODIHR also notes that these elections were efficiently and professionally organised and the campaign was competitive. However, it highlighted a lack of transparency and insufficient oversight of campaign finances, as well as a lack of balance in monitored news coverage significantly limiting voters' opportunity to make an informed choice, a highly negative campaign in tone characterised by a pervasive overlap between the ruling coalition and the government, and insufficient effective legal remedies for election disputes. ODIHR also noted that extensive and unregulated spending by entities other than the election contestants, including through advertisements on social media, largely favoured the ruling party. This echoes issues of concern previously identified by the Group of States against Corruption (GRECO) in the funding of political parties and electoral campaigns.

11.2. The Assembly notes that electoral amendments were adopted hastily in December 2020, by means of a cardinal law, under a state of emergency, without meaningful consultation – which is not in line with Venice Commission guidelines – and without reaching a broad political consensus.

11.3. While these amendments include some technical improvements, the Venice Commission assessed that their main effect would be "to favour the incumbents". In particular, the obligation for political parties to appoint candidates in 71 (instead of 27, as was previously the case) out of 106 constituencies, raises questions. One impact of this is that it makes it more difficult for opposition and smaller parties to obtain a foothold and forces them to unite in heterogeneous coalitions. As regards the drawing up of the electoral map, the Assembly notes that constituency boundaries continue to be drawn by parliament and not by an independent and impartial commission, as recommended by the Venice Commission. To prevent gerrymandering, the process should be transparent, include all parties within the Parliament and be based on clear and widely accepted criteria.

11.4. As a result of the recent legal changes and the unaddressed deficiencies of the electoral legislation identified by the Venice Commission, ODIHR and GRECO in the past, the Assembly concludes that the current electoral framework does not ensure a level playing field conducive to fair elections. It also concludes, in light of ODIHR findings, that the legal framework to conduct referendum campaigns is inadequate and challenges voters' ability to make informed choices.

11.5. The Assembly therefore urges the Hungarian authorities to address without further delay the issues identified by ODIHR and the Venice Commission, and in particular to significantly reduce the number of single-member constituencies and counties in which each party needs to nominate candidates, and to enhance the transparency of the funding of political parties and electoral campaigns, including on social media.

12. *In the field of the judiciary and the rule of law*:

12.1. As regards the judiciary, Hungary has an efficient and well-functioning judicial system, as noted by the Council of Europe European Commission for the efficiency of justice (CEPEJ). Nevertheless, while acknowledging that the Venice Commission stated that a number of powers of the President of the National Office of the Judiciary (NOJ) had been transferred to the National Judicial Council (NJC), which resulted in the improved accountability of the President of the NOJ, it also stated that the powers of the NOJ President were still extensive and concentrated in the hands of just one person. The Assembly therefore remains concerned about long-standing issues related to the independence of the judicial system, including the imbalance of powers between the NOJ and the NJC and the concentration of powers in the hands of the President of the Supreme Court (Curia).

12.2. The Assembly regrets that the December 2020 amendments pertaining to the judiciary were adopted without public consultation and during a state of emergency, severely restricting the fundamental rights to gather, discuss, protest, and demonstrate, as pointed out by the Venice Commission.

12.3. While the judicial reforms introduced in 2019 and 2020 failed to address previously identified structural problems concerning the imbalance of powers, the Assembly reiterates previous recommendations made in 2012 by the Venice Commission.

12.4. The Assembly in particular takes note of the latest opinions of the Venice Commission highlighting that:

12.4.1. the 2019 reform, allowing members of the Constitutional Court to become members of the Curia without the involvement of the NJC, could open the door to a politicisation of the Supreme Court;

12.4.2. the procedure for the appointment of the President of the Curia could pose “serious risks of politicisation and important consequences for the independence of the judiciary, or the perception thereof by the public, considering the crucial role of his/her position in the judicial system”, in light of the limited guarantees of independence applying after his/her appointment;

12.4.3. the power of the NOJ President to decide on the temporary transfer of any judge to State institutions and their reintegration in the judiciary could lead to judges being ‘promoted’ to higher judicial functions by a decision of the NOJ President, thus circumventing the procedural guarantees of regular application procedures;

12.4.4. despite detailed rules, the lack of transparency concerning the discretionary powers of the NOJ President and court presidents to allow bonuses to judges could lead to arbitrary decisions or self-censorship by judges.

12.5. In line with the recommendations issued by the Venice Commission, the Assembly therefore asks the Hungarian authorities to:

12.5.1. set up clear, transparent and foreseeable conditions for the seconded judges to be assigned to a higher position after the period of secondment;

12.5.2. remove the prerogative of the President of the Curia to mandate temporary presiding judges, or at least to eliminate any margin of discretion in their selection;

12.5.3. abolish the possibility to adopt the authoritative type of uniformity decisions, while recalling that any unification competence of the Curia must comply with fundamental principles of the separation of powers;

12.5.4. with respect to the changes brought to the complex case allocation system in 2020, clarify the criteria for the President of the Curia to increase the members (from three to five) of adjudicating panels for certain types of cases and to make the opinion of the relevant college and the Judicial Council public and binding in order to ensure the transparency of the process and increase the trust of citizens in the good and impartial functioning of the judiciary.

12.6. The Assembly also recalls the interim resolution of the Committee of Ministers of 9 March 2022 on the implementation of the *Baka v. Hungary* ruling. The Assembly takes note of the declaration made by the Minister of Justice of Hungary that this case resulted from a one-time constitutional reform which was a unique event in the constitutional development of Hungary that is completed. However, it recalls that the Committee of Ministers strongly urged the authorities to “introduce the required measures to ensure that a decision by Parliament to impeach the President of the Curia will be subject to effective

oversight by an independent judicial body in line with the European Court's case law, as well as to evaluate the domestic legislation on the status of judges and the administration of courts", including the evaluation of the guarantees and safeguards protecting judges from undue interference.

12.7. The Assembly therefore urges the Hungarian authorities to strengthen the self-governance of the judicial system and guarantee its independence more effectively. It calls for the strengthening of the role and independence of the National Judicial Council and the extension of its powers to ensure effective oversight of the NOJ President, in line with the recommendations of the Venice Commission.

12.8. The Assembly welcomes the progress achieved in fighting money laundering and financing of terrorism, in compliance with the recommendations made by MONEYVAL, which has upgraded Hungary's rating from "partially compliant" to "largely compliant" in several areas. This should inspire the authorities to address other deficiencies and establish legal frameworks that ensure transparency and accountability, in particular when fighting corruption, in line with GRECO's recommendations. This notably requires improving the level of transparency and consultation in the legislative process, adopting codes of conduct or ethics for members of parliament and government, reviewing the format of asset declarations and the broad immunity enjoyed by MPs and strengthening rules governing conflicts of interest and whistle-blowers' protection.

12.9. The recent creation of "public-interest trusts", is very worrying. These trusts will manage a large amount of public and private funds without supervision by the State audit. Also of concern is the absence of legal provisions governing the prevention of conflict of interests of board members (appointed for life by the government). These problems should be addressed by the authorities, in line with the Venice Commission's recommendations.

12.10. The Assembly is also concerned by the use of the Pegasus spyware, whereby several hundred individuals, including journalists, lawyers and politicians, were subject to secret surveillance. It calls on the Hungarian authorities to urgently revise the National Security Services Act governing secret surveillance, urging them to ensure that it provides for an independent external oversight and sufficient safeguards against abuses and possible violations of the right to privacy and family life, and calls for the implementation of the *Szabó and Vissy v. Hungary* judgment of 2016.

13. *In the field of media*:

13.1. The Assembly reiterates its concerns about the media. The establishment, in 2018, of a conglomerate of over 470 media outlets – the Central European Press and Media Foundation ("KESMA") – has led to greater media market concentration. The overwhelming distribution of advertising by the State or State-owned companies to pro-governmental medias has resulted in distorted media pluralism and state capture of media. The Assembly asks the authorities to ensure fair and transparent distribution of such advertising expenditure, including on social media. In addition, the Assembly is highly concerned by the decision taken by the Media Council not to renew the licence of the independent radio stations *Klubrádió* in 2020 and *Tilos Rádió*'s in 2022 due to failings, which has resulted in discriminatory measures and a shrinking space for alternative media.

13.2. Recent legislation about the "dissemination of false information" relating to the Covid-19 pandemic has placed additional pressure on journalists, who could face a three-year prison sentence. The Assembly calls on the Hungarian authorities to repeal this law and to fully and effectively guarantee access to public information and to suppress statutory provisions that have a chilling effect on freedom of expression, including by decriminalising defamation.

13.3. In addition, the Assembly encourages the Hungarian authorities, in line with Venice Commission recommendations, to improve the media environment by strengthening the functional independence of the Media Council, reducing the term of office of the Media Authority's president, and withdrawing some of his/her powers of appointment. The Assembly also invites the Hungarian authorities to consider implementing a more open and pluralistic appointment procedure for Media Council members, including by allowing civil society groups to participate in the nomination process.

14. The undisputed exercise of power by the same coalition, which since 2010 has enjoyed almost continuously a two-thirds majority, has, over time, in the current constitutional framework, significantly reduced the efficiency of the system of checks and balances and strengthened the ruling coalition's influence on State bodies and key independent institutions. The recent changes in the electoral law have further reduced the fairness of the electoral process, and thus weakened the ability of the system to safeguard political pluralism and foster political alternatives. The Assembly concludes that the cumulative effects of the measures that negatively impact the independence of the judiciary, the situation of media, transparency and accountability of State institutions, overall undermine the functioning of democratic institutions. It acknowledges, however, that

despite this restrictive environment, there is an effective parliamentary opposition as well as a vibrant civil society. The Assembly remains therefore confident that the authorities can restore the necessary conditions for a fully pluralistic, democratic society with full respect of the rule of law, in co-operation with the Council of Europe monitoring and expert bodies, and the Venice Commission. It takes note, in this respect, of the authorities' declared commitment to democratic values.

15. In light of the long-standing issues pertaining to the rule of law and democracy that remain largely unaddressed by the authorities, the Assembly resolves to use the means at its disposal to closely follow the developments with regard to the functioning of democratic institutions and the rule of law in Hungary in close co-operation with the Hungarian authorities.

## B. Explanatory memorandum prepared by Mr George Papandreou and Mr Eerik-Niiles Kross, co-rapporteurs

### 1. Introduction

1. Under its terms of reference as defined in Resolution 1115 (1997) (as modified), the Monitoring Committee is seized to carry out regular periodic reviews of the compliance of the obligations entered into upon their accession to the Council of Europe by member States that are not already under a full monitoring procedure or engaged in a post-monitoring dialogue. Until 2019, on average two periodic review reports on specific countries were appended to the annual report on the progress of the Parliamentary Assembly's monitoring procedure. They were prepared in alphabetical order under the authority of the committee's chairperson, and the recommendations to which the reviews gave rise were included in resolutions accompanying the annual reports on the progress of monitoring procedure. As a result, their impact on the countries concerned was limited.

2. In 2018, on the initiative of its then chairperson, the committee began to reflect on the possible ways and means to strengthen political weight of periodic reviews. This discussion led to the proposals which the Assembly endorsed in Resolution 2261 (2019) "The progress of the Assembly's monitoring procedure (January-December 2018) and the periodic review of the honouring of obligations by Iceland and Italy", adopted on 24 January 2019. In paragraph 14, the Assembly thus welcomed the Monitoring Committee's decision to "change the format of periodic reviews with a view to submitting them for debate independently from the committee's progress report, accompanied by specific resolutions for each country, and replacing the current method of selection based on alphabetical order by a selection on substantive grounds, while maintaining the objective of producing, over time, periodic reviews on all member States".

3. On 6 March 2019, the Monitoring Committee selected four countries, including Hungary, with a view to preparing periodic review reports and informed the Bureau accordingly. Following some problems with the interpretation of the rules governing the selection procedure and pending the opinion of the Committee on Rules of Procedure, Immunities and Institutional Affairs, the Monitoring Committee suspended the preparation of all periodic review reports and resumed its work only on 16 January 2020.

4. Furthermore, to avoid any possible future misinterpretation, the relevant provisions contained in Resolution 1115 (1997), (as modified) have been amended. They specify that the preparation and submission of periodic review reports should be done in accordance with Rule 26 of the Rules of Procedure. The order and frequency of these reports will be decided upon by the Monitoring Committee "in accordance with its internal working methods based on substantive grounds, with the objective of producing, over time, periodic review reports on all member states".

5. It is further specified that during preparation of these reports, the authorities of the country in question would be given a six-week period to provide their comments on the preliminary draft report to be transmitted to them by the committee. Lastly, the Assembly decided that all periodic reviews should be prepared by two co-rapporteurs from different countries and political groups, as in the case of all other Monitoring Committee reports, with the exception of the annual reports on the progress of monitoring procedure.

6. It was under this new framework for periodic review reports that the Monitoring Committee appointed Mr George Papandreou (Greece, SOC) and František Kopřiva (Czech Republic, ALDE) co-rapporteurs on 27 May 2020. Following Mr Kopřiva's resignation, Eerik-Niiles Kross (Estonia, ALDE) was appointed as co-rapporteur on 14 December 2021.

7. In the preparation of the current report, we have endeavoured to be as impartial as possible. In December 2020, we submitted to the committee the proposals for the scope of our report and areas which it would cover and we outlined our approach and timetable. We then began the work by establishing a dialogue with the Hungarian delegation, whom we met during a remote meeting on 1 February 2021. We agreed that there would be no discussion of any texts during the Hungarian presidency in the Council of Europe Committee of Ministers (from May to November 2021) and that no debate would be held in the Assembly close to the Hungarian parliamentary election scheduled for April 2022. Given these circumstances, and the change of rapporteur (see above), the Bureau agreed to extend the validity of the reference until 12 October 2022.

8. In addition, we have asked the committee to hold several exchanges of views on significant developments that had occurred in Hungary. Accordingly, on 4 February 2021, the committee discussed the situation in Hungary with the participation of Mr Miklós Szánthó, director of the Centre for Fundamental Rights, and Mr András Léderer, senior advocacy officer with the Hungarian Helsinki Committee. On 9 March 2021

Mr Nicolaas Bel, deputy head of the Justice Policy and Rule of Law Unit in the European Commission's Directorate-General for Justice and Consumers, presented the European Commission's 2020 Rule of Law report for Hungary and discussed it with the members of the committee. Furthermore, in February 2021, we suggested that the committee should ask the European Commission for Democracy through Law (Venice Commission) for an opinion on the legislative and constitutional package adopted by the Hungarian Parliament in December 2020. The committee agreed and the Venice Commission issued a first opinion in July 2021, and an additional opinion on other provisions of this package in October 2021. We have obviously taken them into account during the preparation of this report. We also held remote interviews on the subject of media freedom on 12 and 13 April 2021, with a wide range of experts described in section 4.

9. The preliminary draft report was sent for comments to the authorities on 14 September 2021. The committee received comments from Ms Zita Gurmai (Hungary, SOC), opposition member, on 30 November 2021. Comments from the authorities were handed to the rapporteurs on 14 June 2022 in Budapest. Additional comments were sent on 2 August 2022 and considered by the Monitoring Committee respectively on 22 June 2022 and 14 September 2022.[3]

10. On 14-15 June 2022, we paid a fact-finding visit to Budapest, a visit long overdue, and postponed due to the pandemic and the electoral campaign ahead of the parliamentary elections of 3 April 2022. The visit focused on the latest political developments, the functioning of the judiciary and the impact of the war in Ukraine on the country's institutions, four months after the outbreak of the Russian aggression against Ukraine. We thank the Hungarian authorities for their co-operation and hospitality and for facilitating the political dialogue, including informative meetings with State secretaries and Presidents of the high judicial bodies. We also had interesting meetings with opposition members at national and local levels, as well as with civil society activists and media representatives.

11. Lastly, as in the case of any report prepared by our committee, we have drawn on the most up-to-date findings of the Council of Europe monitoring mechanisms, on relevant reports of the Assembly and of the Council of Europe Commissioner for Human Rights, as well as on reports by other international organisations, in particular the European Union, and civil society organisations. We have also taken note of developments within the European Union concerning Hungary with regard to the three cornerstones of the Council of Europe: human rights, democracy and rule of law, and which are of direct relevance to our work.[4] In 2022, the European Commission issued its Rule of Law report containing, for the first time, recommendations addressed to the country, in this case related to the judiciary, the fight against corruption, media and civil society organisations.[5]

12. Unlike monitoring and post-monitoring reports, this report is not a comprehensive study but rather an analysis of developments in Hungary in relation to the specific Council of Europe standards in the fields considered to be particularly meaningful. This report highlights a set of concerns and uncertainties that were discussed with the Hungarian authorities and should be addressed by the country.

## 2. Background information and scope of report

13. Hungary joined the Council of Europe on 6 November 1990, undertaking to fulfil the obligations incumbent upon every member State under Article 3 of the Statute of the Council of Europe (ETS No. 1) with regard to pluralist democracy, the rule of law and human rights. Hungary has been an active Council of Europe member State. It was the first of the former communist countries to ratify the European Convention on Human Rights (ETS No. 5, "the Convention") in 1992. By 26 July 2022, Hungary had ratified 94 Council of Europe treaties and signed 19 additional treaties without ratification.[6] In May 2021, Hungary took over the presidency of the Committee of Ministers of the Council of Europe with the following priorities: promoting the effective protection of national minorities; interreligious dialogue highlighting the important role of intercultural

3. See AS/Mon (2021) 09 REV – Comments II.
4. These developments included European Commission infringement procedures, EU Court of Justice decisions, the procedure under Article 7.1 of the Treaty on European Union relating to the clear risk of a serious breach of the values on which the EU is founded or the publication of the first Rule of Law reports for Hungary by the European Commission in 2020 and 2021.
5. 2022 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, SWD(2022) 517 final, 13 July 2022. The European Commission indicated that these recommendations add to the concerns raised in the rule of law-related rulings of the CJEU, the rule of law related infringement procedures, the concerns raised under the conditionality regulation, the relevant concerns raised in the Article 7 TEU procedure initiated by the European Parliament, and the relevant country-specific recommendations issued under the European Semester.
6. Council of Europe Treaty Office (accessed 26 July 2022).

dialogue in tackling intolerance; the next generation, with a special emphasis on protection of family values, youth policy, children's rights, as well as social inclusion and opportunities for the Roma people and Travellers; technological challenges, including justice in the digital age, artificial intelligence and the fight against cybercrime; and the environment, including European landscape protection, protection of habitats, the fundamental right to a healthy environment, and sustainable development.[7] Discussions on challenges related to digitalisation and artificial intelligence culminated with the formal approval of the Second Additional Protocol to the Convention on Cybercrime (ETS No. 185, 2001, "Budapest Convention") on enhanced co-operation and the disclosure of electronic evidence (CETS No. 224) by the Committee of Ministers on 17 November 2021.

14. Since the accession to power, in 2010, of the coalition led by Fidesz (Hungarian Civic Alliance) and the Christian Democratic People's Party (KDNP) with a parliamentary majority of two-thirds, the country has seen far-reaching changes: a new constitution was adopted in 2011 and a number of cardinal laws have been approved. The constitutional and legislative framework has been assessed time and again by Council of Europe monitoring mechanisms, resulting, amongst other things, in the adoption of 23 opinions in 11 years by the Venice Commission. A number of them were prepared at the request of the Assembly on issues that are considered cause for concern, and particularly freedom of expression, freedom of assembly, independence of the judiciary and the situation of the media.

15. The Assembly has also been following closely developments in Hungary since 2011, resulting in closer scrutiny of Hungary's honouring of its Council of Europe membership obligations. In 2013, following the debate on the basis of the report submitted by the Monitoring Committee, the Assembly decided not to open a monitoring procedure for Hungary but declared itself to be "deeply concerned about the erosion of democratic checks and balances as a result of the new constitutional framework in Hungary" that had introduced "excessively concentrated powers, increased discretionary powers and reduced both the accountability and legal oversight of numerous government institutions and regulatory bodies in Hungary".[8] In its subsequent Resolution 2064 (2015) "Situation in Hungary following the adoption of Assembly Resolution 1941 (2013)", the Assembly asked the Hungarian authorities to "endeavour to solve the outstanding issues" and decided that special examination of these matters should be concluded. However, in 2017 the Assembly, in Resolution 2162 (2017) "Alarming developments in Hungary: draft NGO law restricting civil society and possible closure of the European Central University", agreed that recent developments in Hungary deserved "its close attention and the mobilisation of Council of Europe expertise to help the Hungarian authorities ensure compliance with relevant Council of Europe and international standards in the field of freedom of association and expression" and decided to continue to follow developments in Hungary closely. In January 2018 the Assembly had another opportunity to discuss developments in Hungary during the debate on the 2018 periodic review report on Hungary: the Assembly adopted Resolution 2203 (2018) containing specific recommendations for Hungary relating to the three cornerstones of the Council of Europe (democracy, human rights and the rule of law). This resolution will be a starting point for our report.

16. Hungary has also been a member of the European Union since 2004 and is thus subject to the procedures provided for by EU bodies for States governed by the rule of law (which, for the European Union, encompasses democracy, rule of law and fundamental rights). The EU's concerns have often coincided with those expressed by the Council of Europe. In particular, on 12 September 2018, the European Parliament triggered Article 7.1, of the Treaty on European Union (TEU),[9] a procedure that is activated when there is "a clear risk of a serious breach by a Member State of the values referred to in Article 2" of the TEU (encompassing the values on which the Union is founded, such as respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights). It is up to the Council of the European Union, if the matter is referred to it, to determine whether there is a clear risk of a serious breach.[10] After the triggering of the Article 7.1, procedure by the European Parliament, the Council of the European Union has taken limited action to date (it held two hearings on 16 September and 10 December 2019 for the General Affairs Council and two others on 22 June 2021[11] and in 2022). On 9 July 2019, however, in the framework of

7. Priorities of the Hungarian Presidency of the Committee of Ministers of the Council of Europe (21 May – 17 November 2021), 19 May 2021, CM/Inf(2021)9.
8. Resolution 1941 (2013) "Request for the opening of a monitoring procedure in respect of Hungary", paragraph 6.
9. See the European Parliament Resolution of 12 September 2018 on a proposal calling on the Council to determine, pursuant to Article 7.1 of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded (2017/2131(INL)).
10. The TEU also provides for a sanctioning mechanism (Article 7.2) for "the existence of a serious and persistent breach by a Member State of the values referred to in Article 2"; it requires unanimity on the part of the European Council and can lead to the suspension of certain rights, including the right to vote in the European Council. However, this is unlikely to happen, since Hungary and Poland (against whom the Article 7.1 procedure has also been initiated) have formed a coalition to prevent each other's procedure from making progress.
11. General Affairs Council, press release of 22 June 2021.

the European Semester process with a view to Hungary's National Reform Programme, the Council of the European Union recommended that Hungary take action to: "Reinforce the anti-corruption framework, including by improving prosecutorial efforts and access to public information, and strengthen judicial independence; improve the quality and transparency of the decision-making process through effective social dialogue and engagement with other stakeholders and through regular, appropriate impact assessments".[12]

17. In 2020 the European Commission published its first report on rule of law in European Union member States, under the European rule of law mechanism.[13] This mechanism provides for an annual dialogue on the rule of law between the Commission, the Council, the European Parliament, member states, national parliaments, civil society and other stakeholders. The Monitoring Committee was able to become familiar with the report during an exchange of views with the representative from the European Commission on 9 March 2021. It aims at identifying possible problems in relation to the rule of law as early as possible and to present best practice. Areas covered include justice systems, the anti-corruption framework, media pluralism and freedom, and other institutional issues linked to checks and balances. The European Commission has also the power to trigger infringement procedures. Ten procedures have currently been initiated against Hungary in the fields of justice, fundamental rights, freedom and security. Four of those procedures were initiated in 2021, and two in 2022.[14] The last infringement procedure to date concerns the non-compliance with anti-fraud EU regulation and was initiated on 20 May 2022. On 27 April 2022, the European commission triggered the rule of law conditionality mechanism that allows the EU to withhold funding when there is a risk concerning the respect of the rule of law.[15]

18. We also took note of changes in the human rights protection mechanisms in Hungary: in 2021, the Office of the Commissioner for Fundamental rights took over the competences of the Equal treatment authority. The Commissioner for Fundamental rights is elected by the parliament with a two-thirds majority. S/he may trigger a review of a law by the Constitutional Court. The Venice Commission raised concerns about this merger, stating that there is a risk that it may undermine the effectiveness of the work in the field of promoting equality and combating discrimination.[16] Concerns on its efficiency have also been raised by NGOs like Amnesty international.[17] In September 2021, the Global alliance of National Human rights institutions – which is ranking National institutions protecting human rights – downgraded the Commissioner for Fundamental rights from rank A to rank B.[18]

19. Another striking feature that we noted was the concentration of powers observed in several areas, as we will depict it in this report, such as the judiciary, the media, the education sector and the weakening of local self-government. This was noted, with concerns, by the Congress of local and regional authorities of the Council of Europe; it has called on the Hungarian authorities to "reverse the centralisation trend, and in particular stop the allocation of local competences to the State administration" and "limit the interferences by State authorities in municipal functions".[19] As a consequence of this trend, the portfolio of the Minister of interior also encompasses, since 2022, the areas of education, welfare policy and health.[20]

20. The decision by the Assembly's Monitoring Committee to prepare a periodic review report on Hungary has thus offered a fresh opportunity to engage in dialogue with the authorities in order to take stock of progress achieved and address issues of urgent concern. In line with the proposals made on 30 November 2020 by the Assembly rapporteurs appointed to prepare the periodic review reports and approved by the Monitoring Committee in December 2020, we have decided to focus on issues affecting the operation of

---

12. Council Recommendation of 9 July 2019 on the 2019 National Reform Programme of Hungary and delivering a Council opinion on the 2019 Convergence Programme of Hungary, paragraph 25.4 (2019/C 301/17).
13. 2020 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, 30 September 2021, SWD (2020) 316 final. This report was dismissed by Hungary's Minister of Justice as "absurd and false" and based on "biased and non-transparent" sources ("Hungary Calls EU Rule of Law 'Absurd and False'", Barron's). The 2021 Rule of Law report on Hungary was published by the European Commission on 20 July 2021 (See the European Commission Rule of Law report 2021: Country Chapter on the rule of law situation in Hungary, SWD(2021) 714 final).
14. See the European Commission's database on infringement decisions.
15. In major first, EU triggers power to cut Hungary's funds over rule-of-law breaches – POLITICO.
16. Opinion on the amendments to the Act on Equal Treatment and Promotion of Equal Opportunities and to the Act on the Commissioner for Fundamental Rights as adopted by the Hungarian Parliament in December 2020, adopted by the Venice Commission at its 128th Plenary Session (Venice and online, 15-16 October 2021), CDL-AD(2021)034-e.
17. Amnesty International report on Hungary 2021.
18. https://ganhri.org/membership/.
19. Recommendation 451 (2021) of the Congress of local and regional authorities on the Monitoring of the European Charter of Local Self-Government in Hungary, 12 February 2021. The Congress also noted that most of the shortcomings raised in its previous Recommendation 341 (2013) had not been addressed.
20. https://kormany.hu/belugyminiszterium/allamtitkarok.

democratic institutions and assess their impact on (or interference with) fundamental freedoms. Consequently, we have decided to focus this report on three core questions, namely good governance, judicial independence and the media situation, which seem to play a vital part in the operation of democratic institutions.

21. We would like to emphasise that this report does not intend to look at Hungary's external policy or its positions within the European Union, which would be obviously beyond the scope of our mandate. However, during our visit to Budapest, we were extensively informed by the authorities about issues they deemed important in order to understand the overall context, namely the need to safeguard the Hungarian nationhood, identity and security, and to preserve Hungary's economic interests in the current regional context. We were also informed about Hungary's vision of European integration and European unity. The Prime Minister later elaborated this vision for a "decade of uncertainty and war" on 23 July 2022, during his address at the Bálványos Summer Free University and Student Camp, which sparked controversies: the reference to "mixed races" raises serious questions as to whether this vision is in line with European values.[21]

22. As a result, a number of issues considered to be cause for concern by Council of Europe monitoring mechanisms will not be specifically addressed in this report. However, we have thought it necessary to mention some of the more important issues considered in previous Assembly reports and to provide some up-to-date information on them. These issues relate to migration, gender equality, freedom of association, academic freedom and the situation of NGOs.

### *2.1. Migration issues*

23. Hungary has been facing enormous challenges after a mass influx of migrants and refugees since 2015. The situation in the "transit zones" has attracted attention of several Council of Europe monitoring bodies: in 2018, the European Commission against Racism and Intolerance (ECRI) regretted that its 2015 recommendation to use open reception facilities had gone unheeded and asked the authorities to end detention in transit zones as a matter of urgency, particularly for families with children and all unaccompanied minors.[22] The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) recommended in 2018 that the authorities fundamentally revise their policy of keeping foreigners in transit zones (especially at Röszke and Tompa) and, as a matter of priority, put an end to the accommodation of unaccompanied minors therein. The CPT also underlined the risk of being subjected to physical ill-treatment that was run by irregular migrants apprehended by Hungarian police officers and asked the authorities to put an end to the practice of "pushbacks" (*refoulement*) to the Serbian side of the border, emphasising that there was no procedure for assessing the risk of ill-treatment in the case of a forcible removal .[23] In 2019 the Committee of the Parties to the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (the Lanzarote Committee) found that children in transit zones were still facing the risk of becoming victims of sexual exploitation and sexual abuse and deplored the lack of effective measures to protect migrant and asylum-seeking children from such risk in transit zones at the Serbian/Hungarian border.[24] In 2018 the Group of Experts against Trafficking in Human Beings (GRETA) prepared a report under Rule 7 of its Rules of Procedure, that is, after having received "reliable information indicating a situation where problems require immediate attention to prevent or limit the scale or number of serious violations of the Convention", which can lead to "an urgent request for information to any party or parties to the Convention". GRETA has called on the Hungarian authorities to take further steps to proactively identify actual and potential victims of trafficking among migrants and asylum seekers, including in transit zones.[25]

---

21. The Prime Minister stated that "the internationalist left employs a feint, an ideological ruse: the claim – their claim – that Europe by its very nature is populated by peoples of mixed race", emphasising that Hungary did not "want to become peoples of mixed-race". In addition, Hungary could only maintain its economic success and stay out of the general recession in Europe if it would stay "out of the war, out of migration, out of gender lunacy, and out of the global tax". The full speech of the Prime Minister is available here: https://miniszterelnok.hu/speech-by-prime-minister-viktor-orban-at-the-31st-balvanyos-summer-free-university-and-student-camp/.

22. ECRI conclusions on the implementation of the recommendations in respect of Hungary subject to interim follow-up [following the report on Hungary (fifth monitoring cycle) published on 9 June 2015], adopted on 21 March 2018 and published on 15 May 2018, CRI(2018)24.

23. Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 20 to 26 October 2017, published on 18 September 2018, CPT/Inf(2018)42.

24. Assessment by the Lanzarote Committee of the follow-up given by the Hungarian authorities to the recommendations addressed to them further to a visit undertaken by a delegation of the Lanzarote Committee to transit zones at the Serbian/Hungarian border (5-7 July 2017), adopted by the Lanzarote Committee on 6 June 2019, T-ES(2019)11_en final.

24. These concerns were also set out in the 2019 report by the Commissioner for Human Rights, Dunja Mijatović, who observed that the "negative stance against immigration and asylum seekers adopted by the Hungarian government since 2015 has resulted in a legislative framework which has undermined the reception and protection of asylum seekers and the integration of recognised refugees". In a "'crisis situation due to mass immigration', decreed by the government in September 2015 and still in force despite greatly diminished asylum numbers in Hungary and the European Union as a whole, extraordinary legislation and rules apply in the treatment of asylum seekers in violation of European and international law and human rights norms". She urged the government to discontinue application of the new inadmissibility ground for asylum, which had resulted in practically systematic rejection of asylum applications, whilst calling for effective investigations into allegations of excessive use of violence by the police during forcible removals of foreign nationals. She also expressed her deep concern about "the anti-immigrant stance adopted by the Hungarian government […] fuelling xenophobic attitudes, fear and hatred among the population", which had "a harmful effect on the integration of recognised refugees in Hungary".[26]

25. Lastly, these rights violations have been corroborated by the European Court of Human Rights, which on 2 March 2021 found multiple violations of the rights of a family of asylum seekers during their several-month stay in the Röszke transit zone in 2017:[27] failure to provide sufficient food for the father and the living conditions of the pregnant mother and three children had entailed a violation of Article 3 of the Convention, which prohibits inhuman or degrading treatment. The Court further held that the migrants' stay in the transit zone constituted a *de facto* deprivation of liberty, prohibited by Article 5. 1, and that the family's right to a speedy court ruling on the lawfulness of its detention (Article 5.4) had also been violated. In a previous case (*Ilias and Ahmed v. Hungary*, Application No. 47287/15), the Grand Chamber found on 21 November 2019 that Article 5 of the Convention was not applicable, although the Chamber had previously found a violation of paragraphs 1 and 4 of this article, since the applicant's confinement in Hungary's Röszke transit zone on the border with Serbia had amounted to deprivation of liberty and there had been no formal decision with reasons for this measure or any review of it by the courts. Both the Chamber and the Grand Chamber found that Article 3 had been violated because the applicants had been returned to Serbia without a proper examination of their reception there but also that Article 3 had not been violated regarding the conditions in the transit zone (which did not amount to inhuman or degrading treatment) as the hygiene, food and medical care were sufficiently decent.[28]

26. As for the European Union, the Court of Justice of the European Union (assessing the situation as it was in 2018) found, on 17 December 2020, that Hungary had failed to comply with EU law by restricting access to the international protection procedure, by returning migrants in a border area and by making it impossible in practice for third-country nationals to lodge asylum applications.[29] The Court of Justice of the European Union (CJEU) also upheld an earlier ruling that the fact that Hungary required asylum seekers to remain in a transit zone throughout the procedure "constituted detention". The Court found that restricting access to the international protection procedure, unlawfully detaining asylum seekers in transit zones and moving illegally staying third-country nationals to the Serbian side of the border fence "without prior compliance with the procedures and safeguards provided for [in the Return Directive]" amounted to a breach of EU law. Following this judgment, the European Border and Coast Guard Agency (Frontex) decided on 15 January 2021 to suspend joint operations along the Hungarian border and not to return until Hungary had complied fully with the CJEU ruling on treatment of asylum seekers. The European Commission considers Hungary's failure to implement the CJEU judgment to be a violation of the rule of law and decided, on 12 November 2021, to ask the Court to impose financial sanctions.[30] On 15 July 2021, the European Commission also stepped up its infringement procedure against Hungary concerning the introduction of unlawful restriction to access the asylum procedure and referred the case to the Court.[31]

---

25. Group of Experts against Trafficking in Human Beings (GRETA), Report on Hungary under Rule 7 of the Rules of Procedure for evaluating implementation of the Council of Europe Convention on Action against Trafficking in Human Beings, adopted on 23 March 2018, GRETA(2018)13.

26. Commissioner for Human Rights of the Council of Europe, Dunja Mijatović, Report following her visit to Hungary from 4 to 8 February 2019, 21 May 2019, CommDH(2019)13.

27. *R.R. and Others v. Hungary* (Application No. 36037/17), 2 March 2021. A subsequent request for referral to the Grand Chamber was rejected.

28. See:
www.echr.coe.int/Documents/Press_Q_A_Ilias_and_Ahmed_Hungary_ENG.pdf
www.asylumlawdatabase.eu/en/content/ecthr-ilias-and-ahmed-v-hungary-application-no-4728715-21-november-2019-0.

29. European Court of Justice on Twitter: "#ECJ: #Hungary has failed to fulfil its obligations under #EU law in the area of procedures for granting #InternationalProtection and returning illegally staying third-country nationals", https://twitter.com/EUCourtPress/status/1339490322661990402.

27. The outbreak of the war in Ukraine In February 2022 has had an important impact in Hungary and triggered one of Hungary's largest humanitarian relief operations[32] to help refugees from and internally displaced persons in Ukraine. We were informed about action undertaken to accommodate the Hungarian refugees. Since 24 February 2022 to mid-June 2022, approximately 1 566 000 people from Ukraine had entered Hungary, out of whom more than 780 000 qualify as refugees. The country had provided medical supplies, food, water, hygiene products, childcare products, fuel and other essential goods. It had spent 104 million € (40 billion HUF) to address the humanitarian crisis in Ukraine and donate humanitarian aid, including to the Transcarpathian region in Ukraine, where approximatively 150 000 Hungarians live according to the latest census of 2001, at the request of its governor. The country also pledged a package of assistance worth 14 billion HUF (37 million €) at the international donors conference of Warsaw, on 5 May 2022.[33] We discussed this challenging situation during our visit to Budapest, and praised the people of Hungary for handling the mass arrival of refugees from Ukraine in a spirit of great solidarity.

28. The authorities have pledged to accept all refugees fleeing the war in Ukraine – regardless of their ethnicity, nationality, or visa. In its letter to the Minister of Interior, Mr Pintér, the Council of Europe Commissioner for Human Rights, Dunja Mijatović, has expressed her "deep appreciation for the solidarity and generosity shown by the Hungarian authorities and people in maintaining an open border policy and welcoming all those fleeing the war in Ukraine", noting however that only some 23 000 registrations for temporary protection had been received by 1 June 2022. She therefore welcomed the decision of the authorities "to extend the accessibility of benefits provided to temporary protection holders also to Hungarian citizens fleeing the war in Ukraine who, due to their lack of legal residence in Hungary, are otherwise not able to obtain social security benefits" – "many of those fleeing Ukraine and deciding to stay in Hungary are of Roma origin, including many Hungarian-speaking Roma with dual Ukrainian-Hungarian citizenship".

29. At the same time, the Commissioner expressed her deep concern about the situation of "third country nationals and stateless persons who are excluded from the temporary protection scheme and have, owing to the continued 'state of mass migration crisis' announced in September 2015, no possibility to apply for international protection or asylum in Hungary (except if they make such a request to the Hungarian embassy in Kyiv). This demonstrates "the inadequacy and unsustainability of the legislative framework related to asylum currently in place in Hungary" which condemns refugees without legal title to be pushed back to Serbia.[34] The Commissioner also deplored "the sustained rhetoric by government officials of differentiating Ukrainians as 'real refugees' and portraying those fleeing atrocities and war elsewhere as economic migrants", what is regrettable and particularly problematic in the absence of a fair and effective asylum procedure, which would precisely have the function of assessing, in each individual case, whether there is a protection need".[35] The concerns over discriminations between Ukrainian and non-Ukrainian refugees were also echoed by NGOs.[36]

### *2.2. Gender equality issues*

30. Gender issues have been a topic of much debate. The government has indicated support for the strategic principle of gender equality but has invoked the Hungarian Constitution, which puts protection of families first;[37] the authorities take issue with the concept of gender (as a social construct). The authorities

30. As of [12 November 2021], "Hungary has not taken the measures necessary to ensure effective access to the asylum procedure. Hungary has also not clarified the conditions pertaining to the right to remain on the territory in case of an appeal in an asylum procedure, in the event where there is no "crisis situation caused by mass immigration". HU: failure to comply with EU rules on asylum and return (europa.eu).
31. The European Commission considered that the introduction of an asylum pre-procedure, even before a non-EU national could make an application for international protection in Hungary, could not be justified by the need to address the Covid-19 pandemic.SWD (2020) 316 final and Commission refers HUNGARY (europa.eu).
32. UN Estimates Around 100-140 Thousand Ukrainian Refugees Currently in Hungary (hungarytoday.hu).
33. Figures provided by the Ministry of Foreign affairs, 22 June 2022.
34. The authorities mentioned that "certificates of temporary residence are issued to stateless persons and nationals of third countries without fulfilling all the conditions of entry and stay that allows its holder to stay in Hungary for 30 days and request the legalisation of their stay in the long term. For third-country nationals who cannot return to their countries of origin due to the principle of non-refoulement, humanitarian residence permit is issued".
35. Letter to the Minister of Interior of Hungary about the longer-term protection perspective of third country nationals and stateless persons addressed by the Commissioner for Human Rights, Dunja Mijatović, on 10 June 2022 (published on 22 June 2022).
36. Hungary sets dogs on non-Ukrainian refugees (euobserver.com).
37. Comments of the Hungarian authorities on the 2019 report by the Commissioner for Human Rights.

have also frequently pointed out that the Hungarian people can make its own social choices. We shall be focusing here on gender issues in terms of Hungary's fulfilment of its obligations to the Council of Europe, on the basis of findings by the latter's monitoring mechanisms.

31. In March 2014 Hungary signed the Istanbul Convention on preventing and combating violence against women and domestic violence, considered to be the gold standard in this field by the United Nations. In 2019 the Commissioner for Human Rights urged the Hungarian authorities to ratify the convention, whilst welcoming the government's intention of preparing a new national strategy for gender equality and the authorities' efforts to expand support services for victims of violence. Ms Mijatović also called on the authorities to address the unequal representation of women in public life[38] through positive measures and to take determined action to eradicate gender stereotypes in educational materials.[39] However, on 5 May 2020 the Hungarian Parliament voted against ratifying the Istanbul Convention and supported the government-backed "Political Declaration n.2/2020 (V.5.) of the National Assembly on "the importance of the protection of children and women and the refusal of accession to the Istanbul Convention" which stated that the Convention promoted "destructive gender ideologies", "illegal migration" and challenges to the traditional family model.[40] While member States are sovereign when choosing to ratify international treaties, it is nevertheless regrettable that this misleading narrative has prevented Hungarian society from embracing a historic convention designed to set the highest standards for protection of women and children. Reference may be made here to the reports already discussed by the Assembly.[41]

32. Another topic of concern is the rights of LGBTI people. In 2020 the Commissioner for Human Rights was alarmed at the apparent escalation of the stigmatisation of LGBTI people and the manipulation of their dignity and rights for political gain.[42] The Venice Commission, for its part, noted in 2021 "a general trend of exclusion and degradation of non-heterosexual persons in Hungary". In May 2020 the Hungarian Parliament banned legal recognition of gender. A raft of laws has been adopted in this field over the past decade: while the institution of registered partnerships was introduced in 2009, the 2011 Constitution provided that marriage is restricted to opposite-sex couples, thus enshrining the legal impossibility of same-sex marriage in the Fundamental Law. Gender studies were banned in 2018 in Hungarian universities.[43] In October 2020 a provision of Act CLXV made it extremely difficult for single persons or non-married same-sex or opposite-sex couples to adopt children, according to interlocutors met by the Venice Commission.[44] The authorities however disagreed with this "overstatement", emphasising that all eligible individuals (namely married couple and individuals) are allowed to adopt a child, and that the decision of the minister for children and youth policy is based on "a clear and transparent administrative process that includes the experts and officials of the Guardianship Authority", whose decisions can be challenged at courts. Since March 2021, the Guardianship Authority had responded positively to all inquiries made by 54 women and 2 men.[45]

33. More recently, the passing of Law LXXIX relating to child protection on 23 June 2021[46] led to serious protest. As stated by the Venice Commission in its opinion of December 2021, "the effect of the amendments is to outlaw any depiction or discussion of diverse gender identities and sexual orientations in the public sphere, including schools and the media, by prohibiting or limiting access to content that "propagates or portrays divergence from self-identity corresponding to sex at birth, sex change or homosexuality for individuals under 18 years of age"[47] The Assembly General Rapporteur on the rights of LGBTI people, Fourat Ben Chikha, has pointed out that this stance contradicts the States' obligations spelt out by the Committee of Ministers of the Council of Europe in Recommendation CM/Rec(2010)05,[48] to which may be added the

38. At the moment women account for 13.57% of the members of Hungary's National Assembly, a slight increase since the last elections (12.56%).
39. Commissioner for Human Rights of the Council of Europe Dunja Mijatović, Report following her visit to Hungary from 4 to 8 February 2019, published on 21 May 2019, CommDH(2019)13.
40. "Hungary's parliament blocks domestic violence treaty", *Guardian*.
41. See in particular Doc. 14908, "The Istanbul Convention on violence against women: achievements and challenges", (rapporteur: Ms Zita Gurmai, Hungary, SOC).
42. See the statement by the Commissioner for Human Rights Dunja Mijatović, 20 November 2020.
43. "Hungary's constitutional court to review transgender law", 25 November 2020.
44. CDL-AD(2021)029.
45. AS/Mon (2021) 09 rev – comments II.
46. Hungary's Law LXXIX of 2021 on taking stricter measures against paedophile offenders and amending certain child protection laws.
47. Hungary – Opinion on the compatibility with international human rights standards of Act LXXIX amending certain Acts for the protection of children, adopted by the Venice Commission at its 129th Plenary Session (Venice and online, 10-11 December 2021), CDL-AD(2021)050.
48. Statement by Fourat Ben Chikha (Belgium, SOC), Assembly General Rapporteur on the rights of LGBTI people, 16 June 2021.

Venice Commission's 2013 position on the prohibition of "homosexual propaganda".[49] On 22 June 2021, 18 EU member States[50] jointly signed a declaration at a General Affairs Council meeting to express their deep concern regarding the changes contained in Law LXXIX "that discriminate against LGBTIQ persons and violate the right to freedom of expression under the pretext of protecting children".[51] The European Parliament also expressed serious concern on 8 July 2021 following the adoption of this law.[52] Following the launch of an infringement procedure by the European Commission on 15 July 2021[53], which was seen as an "attack from Brussels", Prime Minister Orbán announced that a referendum would be organised on that issue.The opposition called for its boycott.[54] This referendum was held on 3 April 2022, but was declared invalid as the threshold of 50% of valid responses had not been reached,[55] notably due to a call from different NGO to make the referendum invalid.[56] However, the government considered that the referendum did not bind it, and it did not intend to revoke the "child protection" law.

34. The Venice Commission assessed the compatibility with international human rights standards of Act LXXIX amending certain Acts for the protection of children. It concluded that, "in the light of the Venice Commissions' previous recommendations and the European Court of Human Rights previous case law in respect to "propaganda of homosexuality", the amendments can hardly be seen as compatible with the Convention and international human rights standards". The Venice Commission made key recommendations, and requested, among them, to "change the title of the law in order to avoid the suggestion that the portrayal or propagation of diverse sexual orientations and gender identities can be considered as paedophilia and attacks on children's rights"; to repeal or modify the amendments denying the rights of transgender people; and to "repeal the amendments concerning 'propagation or portrayal of divergence from self-identity corresponding to sex at birth, sex change or homosexuality' [...] or at least to limit them to non-objective, obscene or pornographic display".[57]

35. The authorities, for their part, stressed that the National Core Curriculum (NCC), which had been revised in September 2020, prescribes "the full respect for human rights throughout the whole education cycle including the respect for equality, democracy and religious diversity as well as the knowledge of basic concepts concerning gender equality and anti-discrimination", whereby knowledge about gender equality in textbooks "was given a role proportionate with the importance of the topic"; the authorised list of textbooks "must not contain any text, figure or photo that would violate gender equality". Textbooks authorised by the Education Authorities are "free of content (statement, figure, photo, graphic, etc.) that violates the requirement of equal treatment, gender equality and reinforces inequality of opportunity".[58]

36. In December 2020, the Hungarian Parliament adopted the Ninth Amendment to the Constitution. It included provisions on the family (considering marriage to be the union of one man and one woman, adding that "the mother shall be a woman, the father shall be a man") which, according to the Commissioner for Human Rights, could have "far-reaching adverse effects on human rights".[59] Given these concerns, the Monitoring Committee requested an opinion from the Venice Commission, which was adopted in July 2021.[60]

37. In its opinion, the Venice Commission recommended that the Hungarian authorities be "extremely careful in the interpretation and application of the constitutional amendments in a way that the principle of non-discrimination on all grounds, including sexual orientation, is fully implemented in line with international

---

49. Opinion on the issue of the prohibition of the so-called "propaganda of homosexuality" in the light of recent legislation in some member states of the Council of Europe, adopted by the Venice Commission at its 95th plenary session (Venice, 14-15 June 2013), CDL-AD (2013)022.
50. Belgium, Denmark, Estonia, Finland, France, Germany, Ireland, Latvia, Luxembourg, Malta, the Netherlands, Spain and Sweden, joined by Austria, Cyprus, Greece, Italy and Portugal.
51. "Eighteen countries unite at Belgium's initiative to defend LGTBIQ rights in Europe", Sophie Wilmès.
52. European Parliament resolution of 8 July 2021 on breaches of EU law and of the rights of LGBTIQ citizens in Hungary as a result of the legal changes adopted by the Hungarian Parliament (2021/2780(RSP)).
53. "EU founding values: Commission starts legal action against Hungary and Poland for violations of fundamental rights of LGBTIQ people", European Commission press release, 15 July 2021.
54. In 2016, the Hungarian authorities challenged the European Union's migrant relocation plans and organised the so-called "quota referendum" on 2 October 2016. 98% of the voters rejected the EU resettlement scheme, but the result was invalid due to insufficient participation (41%, namely below the 50% threshold required by the constitution). The opposition had called for the boycott of this referendum.
55. "Government's 'Child Protection' Referendum Invalid, Election Cttee Rules", hungarytoday.hu.
56. Election Committee Fines Groups for Encouraging Voters to Make Referendum Invalid – Hungary Today.
57. CDL-AD(2021)050, op. cit.
58. AS/Mon (2021) 09 rev – comments II.
59. See the statement by the Commissioner for Human Rights Dunja Mijatović, 20 November 2020.
60. Opinion on the constitutional amendments adopted by the Hungarian Parliament in December 2020, adopted by the Venice Commission at its 127th plenary session (Venice and online, 2-3 July 2021), CDL-AD(2021)029.

standards and Hungarian constitutional and legislative guarantees": the amendment stating that "Hungary shall protect the right of children to a self-identity corresponding to their sex at birth" should be "repealed or modified to ensure that it does not have the effect of denying the rights of transgender people to legal recognition of their acquired gender identity"[61]. Although there are no European standards that define marriage, the compatibility of the amendment defining a union with Article 8 of the European Convention on Human Rights (right to respect for private and family life) and Article 14 (prohibition of discrimination) taken in conjunction with Article 8 of the Convention will mainly depend on what is allowed by the law: "Problems with a view to the prohibition of discrimination under the ECHR would arise, should Hungary in its family law allow for adoptions by single, albeit only heterosexual parents, or for adoptions by unmarried, albeit only opposite-sex couples. This constitutional amendment should not be used as an opportunity to withdraw existing laws on the protection of individuals who are not heterosexuals, or to amend these laws to their disadvantage." Clear criteria should be established to limit the discretionary power of the Minister of Family Affairs to give or refuse consent for adoption by single persons. The Venice Commission found that there was "a real and immediate danger that the amendments will further strengthen an attitude according to which non-heterosexual lifestyles are seen as inferior, and that they will further fuel a hostile and stigmatising atmosphere against LGBTQI people".[62]

38. In January 2022, the Assembly urged the Hungarian authorities to "repeal with immediate effect all the measures adopted in May 2020, December 2020 and June 2021 that prevent individuals who need it from obtaining the legal recognition of their gender identity, preclude children from obtaining recognition of their gender identity when it is different from the sex assigned to them at birth, bar adoption by anyone other than married heterosexual couples, block access to comprehensive sexuality education and ban the portrayal of trans identities and homosexuality". As stated in Opinion No. 1059/2021 of the Venice Commission, these amendments "contribute to creating a threatening environment where LGBTQI children can be subject to health-related risks, bullying and harassment"".[63]

### *2.3. Freedom of association, academic freedom and the situation of NGOs*

39. The Hungarian authorities recognise "the vital contribution of nongovernmental organisations to the promotion of common values and goals (over 60 000 non-governmental organisations are operating in Hungary)". Legislative amendments in the last couple of years were made to "ensure simplified registration and modified registration procedures for associations and foundations and reduced administrative burdens affecting NGO grant applications".[64]

40. As a number of Assembly reports and Venice Commission opinions have however indicated, the working environment for NGOs has become challenging, starting with the drastic change in the funding environment between 2011 and 2012 and from then onwards (with cuts in State subsidies and changes to their distribution mechanisms), the stigmatisation of foreign funding and the launching in early 2018 of a programme called "Stop Soros"[65] that was supposed to curb illegal immigration. The opinions issued by the Venice Commission that year established that Hungarian legislation did not meet Council of Europe standards:

– The "immigration tax" is a 25% tax (1) on financial support for any immigration-supporting activity carried out in Hungary and (2) on financial support for operations of any organisations having their headquarters in Hungary and carrying out immigration-supporting activities. The joint opinion of the Venice Commission and the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe (OSCE/ODIHR) concluded that "the effect of the legislation introducing the special immigration tax represents an unnecessary and disproportionate restriction of the associations' freedom to determine their objectives and activities and therefore a disproportionate interference with their right to freedom of association".[66] This "immigration tax" continues to apply;

61. Ibid.
62. Ibid.
63. Resolution 2417 (2022) "Combating rising hate against LGBTI people in Europe", para. 12.1.
64. AS/Mon (2021) 09 rev – comments II.
65. Civicus explains: "Philanthropist billionaire George Soros and his concept of open society have for a long time been a target of propaganda. However, the campaign focusing on his person and alleged 'plans' to import millions of immigrants to 'Islamise' Europe became especially intensive during the second half of 2017, in the run-up to the April 2018 general elections." "Democratic backsliding and civil society response in Hungary", Kgalalelo Gaebee (Civicus).
66. Joint Opinion on section 253 on the special immigration tax of Act XLI of 20 July 2018 amending certain tax laws and other related laws and on the immigration tax, adopted by the Venice Commission at its 117th plenary session (Venice, 14-15 December 2018), CDL-AD(2018)035.

– The "Stop Soros" legislative package relates to the organisation of assistance given by an individual on behalf of national, international or non-governmental organisations to persons wishing to apply for asylum. The Venice Commission has criticised the draft Article 353A of the Criminal Code and its effects on NGOs' immigration work: "It criminalises organisational activities which are not directly related to the materialisation of the illegal migration, such as 'preparing or distributing informational materials'. This on the one hand runs counter to the role of assistance to victims by NGOs, restricting disproportionally the rights guaranteed under Article 11 ECHR, and on the other hand, criminalises advocacy and campaigning activities, which constitute[s] an illegitimate interference with the freedom of expression guaranteed under Article 10 ECHR."[67] In November 2019 the European Commission referred Hungary to the Court of Justice on account of this legislation.[68] In a decision of 16 November 2021, the CJEU judged that the "Stop Soros" law and its criminalization of assistance to the making of an application for asylum was in breach EU law;[69]

– The bill on transparency of organisations receiving support from abroad[70] (known as "Lex NGOs" or "Lex Soros" and passed in June 2017) was examined by the Venice Commission in a context where some NGOs receiving support from abroad were publicly labelled by certain members of the ruling coalition as "foreign agents".[71] The Venice Commission expressed a number of reservations concerning this bill given its context and content.[72] In June 2020 the Court of Justice held that the legislation on the transparency of foreign-funded civil society organisations was incompatible with EU law, since the obligations amounted to a restriction of the free movement of capital, while its measures created a climate of distrust with regard to these associations and foundations.[73] On 18 February 2021 the European Commission gave Hungary two months to amend its law on foreign-funded civil organisations, failing which it would incur heavy fines. The government eventually repealed the law on 22 April 2021,[74] making the State Audit Office responsible for reporting annually on associations and foundations whose balance sheets exceeded 20 million HUF (55 200 €) a year, apart from national, religious and sports organisations. This is another topic of concern to NGOs today.[75]

41. In 2017, 37 high-profile NGOs joined forces to establish the Civilisation Coalition in order "to take action against the shrinking civil space and actively work in order to increase the opportunities of democratic participation and the diversity of civil society".[76] The working environment remains challenging and has been

---

67. Joint Opinion on the provisions of the so-called "Stop Soros" draft legislative package which directly affect NGOs, adopted by the Venice Commission at its 115th plenary session (Venice, 22-23 June 2018), CDL-AD(2018)013.
68. Court of Justice Case C-821/19, pending, in SWD (2020) 316 final. In his opinion of 25 February 2021, Advocate General Rantos proposed that the Court should declare that Hungary had failed to fulfil its obligations "by adding a new ground of inadmissibility of applications for international protection to the grounds established exhaustively by that provision" and, further, "by criminalising the organising activity designed to enable asylum proceedings to be brought by persons who do not meet the criteria for the granting of international protection established by national law".
69. Notably the directive 2013/32 and 2013/33. See the judgment of the CJEU of 16 November 2021.
70. Venice Commission Opinion on the draft law on the transparency of organisations receiving support from abroad, published on 20 June 2017, CDL-AD(2017)015; see also Resolution 2162 (2017).
71. Letter to the Speaker of the National Assembly of Hungary by Mr Nils Muižnieks, Commissioner for Human Rights, 26 April 2017 (CommHR/NM/sf021-2017), cited in: CDL-AD(2017)015).
72. Once their annual foreign donations reached 7.2 million HUF (currently 20 500 €), NGOs had to declare on their websites and in all their press material that they were considered to be foreign-funded organisations. In addition, the law ordered them to make public the personal data of their foreign donors if the latter's individual annual donations exceeded 500 000 HUF.
73. When registering, NGOs had to indicate, *inter alia*, "the name of the donors whose support reached or exceeded the sum of 500 000 HUF (approximately €1 400) and the exact amount of the support". This information was later published on a free publicly accessible e-platform. In addition, the civil organisations concerned needed to indicate on their homepages and in their publications that they are an "organisation in receipt of support from abroad". SWD (2020) 316 final.
74. "Government Revokes Controversial NGO Law", *Hungary Today*.
75. Nineteen NGOs expressed concern about the State Audit Office's involvement, noting that their finances were made public every year as required by law. Their statement further noted that many of the NGOs exempted from these new rules actually received an exceptional amount of public money to the detriment of government tax revenue (something that ought to be scrutinised more closely and make the State Audit Office's involvement more necessary). See "Government Revokes Controversial NGO Law" and "Following Criticism, Government Waters Down New Law on NGO Donations" (hungarytoday.hu, 5 July 2021). According to Transparency International, although the bill officially sought to provide more transparency, the ruling came as a heavy blow to NGOs that did not have access to large amounts of domestic or government-provided resources, as civil society organisations critical of the government were increasingly dependent on donations from individuals and businesses (whereas pro-government media outlets could count on State advertising from the Fidesz government, which generated considerable income). It seems that the government is planning to water down its original decision and change from prohibition of anonymous donations made to civil society organisations to disclosure only of donations exceeding 500 000 HUF (1 420 €).

rated by Civicus as "obstructed", a rating given to countries where civic space is heavily contested by power holders, who impose a combination of legal and practical constraints on the full enjoyment of fundamental rights.[77]

42. In February and March 2022, 14 Hungarian NGOs conducted a nationwide campaign led by Amnesty International and the Hatter Society against the referendum on "Child protection" Law (namely for its invalidation). Five days after the referendum, which was invalidated (less than 47,3% of votes were valid, below the 50% threshold), the National Election Committee (NEC) issued fines (totalling nearly 9 million HUF (nearly 24 000 €)) against these 14 NGOs. It considered that the NGOs had violated the spirit of the laws on elections and referendums, and the principle of "bona fidae and due exercise of rights" in national election and referendum procedures. Though acknowledging that it is legal to vote invalid in a referendum, the NEC stated that "the referendum campaign must not be aimed at inciting people to vote invalidly, because this not only undermines but also breaks the constitutional purpose of the direct exercise of power and the legislative will behind it." The NGOs appealed this decision. The Curia annulled most of the decisions of the NEC, holding that – apart from procedural mistakes of the NEC – the NGOs lawfully exercised their freedom of expression, and there were no legal grounds for the NEC to restrict such fundamental right. However, the Curia upheld the fines against Amnesty International and the Hatter Society[78], and their appeal to the Constitutional Court was declared inadmissible on 22 April 2022. The NGOs feared that these rulings could have a chilling effect on civil society organisations and could prevent them from participating in similar public campaigns. It also raised questions as to whether the legality of a campaign for an invalid referendum would be guaranteed in the future. Finally, they deplored public media attacks on an individual judge adjudicating in favor of civil society and the lack of support by the main actors of the judiciary (presidents of the Curia or the National Office for the Judiciary) that could undermine the perception of Hungarian judicial independence.[79]

43. The situation of the universities has also attracted the Assembly's attention. It may be remembered that in 2017 the Assembly expressed its concerns about amendments to the National Higher Education Act (known as "Lex CEU") relating to operation of foreign universities in Hungary and providing that these universities could operate in Hungary only if they were also operating in their countries of origin.[80] While this law was ostensibly neutral, in practice the Central European University (CEU), founded by Soros, was the only university to be seriously affected – eventually leaving the country in 2017. At the Assembly's request, the Venice Commission adopted an opinion on these amendments, in which it acknowledged that there were no uniform European standards in this field; it was therefore up to the Hungarian State to "establish, and periodically review, the most appropriate regulatory framework applicable to foreign universities on its territory". However, the Venice Commission considered that "introducing more stringent rules without very strong reasons, coupled with strict deadlines and severe legal consequences, to foreign universities which are already established in Hungary and have been lawfully operating there for many years, appears highly problematic from the standpoint of rule of law and fundamental rights principles and guarantees. These universities and their students are protected by domestic and international rules on academic freedom, freedom of expression and assembly and the right to and freedom of education."[81]

44. The report discussed in October 2020 by the Assembly painted a worrying picture regarding violations of academic freedom and the autonomy of higher education institutions in Hungary,[82] which has the lowest score (0.662) on the academic freedom index among EU member States. In October 2020 the Court of Justice of the European Union[83] found that "Lex CEU" failed to fulfil Hungary's obligations to the World Trade Organisation and infringed academic freedom in the European Union.[84] In April 2021 the Hungarian

---

76. https://civilizacio.net/en/about-us/our-mission.
77. Mentioned in the European Commission's 2020 Rule of Law Report on Hungary (SWD (2020) 316) final, the Civicus rating is on a five-category scale: open, narrowed, obstructed, repressed and closed.
78. Supreme Court Scraps Election Cttee Decision to Fine NGOs for Negative Referendum Campaign (hungarytoday.hu).
79. Information provided by Amnesty International, 17 June 2022.
80. Resolution 2162 (2017) "Alarming developments in Hungary: draft NGO law restricting civil society and possible closure of the European Central University".
81. Opinion on Act XXV of 4 April 2017 on the amendment of Act CCIV of 2011 on national tertiary education, endorsed by the Venice Commission at its 112th plenary session (Venice, 6-7 October 2017), CDL-AD(2017)022.
82. See appendix to Doc. 15167, "Threats to academic freedom and autonomy of higher education institutions in Europe" (Rapporteur: Mr Koloman Brenner, Hungary, NR). Many Hungarian researchers have left the country because of the restrictions on academic freedom, a neoliberal approach to science that calls into question the importance of the humanities, the removal of gender studies from the list of government-approved master's programmes, universities being merged or shut down on the whims of the minister, transfer of ownership of seven state universities to private foundations the board members of which are appointed by the minister without any academic leaders being included, and university chancellors being appointed by the government.

Government pledged to amend the Higher Education Act. However, "Lex CEU" will have tangible and lasting consequences (such as the departure of the Central European University). At the same time, Fudan University, financed by China, is to be established in Budapest.[85] The Mayor of Budapest challenged this plan. His initiative to organise a referendum on this issue was approved in December 2021 by the Curia. He gathered the necessary number of signatures to initiate it. However, the Constitutional Court ruled on 18 May 2022 that the decision of the Curia was unconstitutional, as the issue of the Fudan university concerned an international agreement with China.[86] The question of academic freedom later resurfaced with the adoption of the Ninth Amendment to the Hungarian Constitution, which includes an article on management of public assets (see below), while the authorities claimed that the establishment of these public asset management foundations was meant to "establish the independence of these organisations from the government".[87] The Venice Commission has warned of the article's likely effect on academic freedom and has again stressed the need to safeguard the latter.

45. This periodic review report will focus on three issues that we consider fundamental for the proper functioning of democratic institutions, namely good governance and electoral issues, judicial independence and the media situation. We must also point out that we are looking at these issues with respect to compliance with Council of Europe obligations, which have been accepted by Hungary.

## 3. Functioning of democratic institutions: good governance issues

### *3.1. Background information on the political system in Hungary*

46. Hungary is a parliamentary republic with a single-chamber parliament: the National Assembly elects the Prime Minister and – by a two-thirds majority – the country's main public officials (President of the Republic, members and President of the Constitutional Court, President of the Supreme Court (Curia), Prosecutor General, President of the National Office for the Judiciary (NOJ), Commissioner and Deputy Commissioners for Fundamental Rights and the Head of the State Audit Office. On 11 March 2022, the parliament elected, with a two-thirds majority in the first round[88], Katalin Novák, former Fidesz Vice-President and Family Minister, as President of Hungary, becoming the first female President.

47. The parliament is composed of 199 members elected for a four-year term: 106 members are elected by the first-past-the-post system in single-member constituencies and 93 by proportional representation using national lists (with a 5% threshold for single political parties, 10% for two-party lists and 15% for multi-party lists). There are 13 officially recognised national minorities (Armenians, Bulgarians, Croatians, Germans, Greeks, Poles, Roma, Romanians, Ruthenians, Serbs, Slovaks, Slovenians and Ukrainians). The Act CCIII of 2011 on the election of members of parliament establishes "a so-called *preferential quota* based on which nationalities' representatives can become members of parliament with 25% of the number of votes that are normally required for parliamentary membership. The position of *nationality advocates* has been introduced so that those nationalities who cannot reach a preferential quota can also participate in the work of the National Assembly. The nationality advocate can be a person who is first on the list of candidates of a nationality's country-level self-government."[89] There is one nationality advocate in the current National Assembly, Mr Imre Ritter representing (since 2018) the German national minority. Each national minority is currently represented by a nationality advocate (also called "spokesperson"[90]), with no voting rights in parliament.[91]

---

83. The authorities reiterated that "despite all allegations, the case before the CJEU was not on the Central European University, but on two specific requirements of the Hungarian law on higher education which applied equally to all foreign higher education institutions operating in Hungary. Nevertheless, as in case of all decisions of the CJEU, the Government was ready to perform all necessary measures to comply with the CJEU's judgement." AS/Mon (2021) 09 – comments II.
84. Case C66/18, *European Commission v. Hungary* (higher education), judgment of the Court (Grand Chamber), 6 October 2020.
85. The establishment of Fudan University in Budapest has given rise to controversy in Hungary, since it is being built with a 450 billion HUF (1.25 billion €) loan from China, eventually to be repaid by Hungarian taxpayers: "Ideology and Competition Key Issues Around Fudan University Budapest" (hungarytoday.hu).
86. Top Court Rules Opposition Referendum Bid on Chinese Fudan University Unconstitutional (hungarytoday.hu).
87. AS/Mon (2021) 09 – comments II.
88. Ms Novák received 137 votes, while her opponent, opposition candidate Péter Róna, obtained 51 votes.
89. Fifth Report submitted by Hungary on the execution of the Framework Convention of the Council of Europe for the Protection of National Minorities, January 2019, p. 11, ACFC/SR/V(2019)005.
90. See the IPU Parline databasis (http://archive.ipu.org/parline-e/reports/2141.htm).
91. "This system of "spokespersons" however is seen as inefficient by some minorities, such as the Romanian minority in Hungary. This issue was brought to our attention by Mr Titus Corlăţean, member of the Romanian delegation to the Assembly in his letter of 22 July 2022 addressed to the Chairperson of the Monitoring Committee. Mr Corlăţean regrets the

48. The coalition led by Fidesz won the parliamentary elections in 2010, 2014, 2018 and in 2022 and has had a two-thirds majority in parliament since the 2010 election (except between 2015 and 2018, following a by-election). This "supermajority" has enabled the party to amend the Constitution on a number of occasions (see below) and establish political control over most key institutions whilst at the same time weakening the system of checks and balances, as the Assembly pointed out in Resolution 2203 (2018). This situation means that the ruling parties have a great responsibility to observe and safeguard the principles governing the smooth operation of democratic institutions, including the rights of the opposition and the need to draft parliamentary bills on the basis of inclusive dialogue with the opposition. This does not seem to have been the case with the recent addition, by two Fidesz members of the Assembly, of last-minute amendments to the Child Protection Bill,[92] on which all parties had originally reached a consensus, and which was in pursuit of a legitimate goal. The Venice Commission regrets that Act LXXIX of 2021, was adopted in "a rushed manner, without any consultation with civil society, opposition and other stakeholders".[93] These amendments gave the law an entirely different complexion, associating homosexuality with paedophilia and providing for a raft of restrictive measures covering what was termed "media content that propagates homosexuality or portrays it", along with fines and potential suspension of their broadcasting licences for media outlets contravening this law.[94]

### *3.2. Electoral law and the election environment*

49. The changes to electoral law in Hungary over the past decade have facilitated the emergence of "supermajorities" benefiting the ruling party. This topic of concern has already been addressed by the Assembly rapporteurs in a 2013 report. They expressed their concerns about the cardinal law on election of members of the Hungarian Parliament, passed in 2011 without broad agreement among the political parties. It changed the compensatory allocation mechanism, making the system less proportional. The possibility of skewed outcomes could negatively affect public trust in the fairness and democratic legitimacy of the election system. The Assembly therefore made a number of recommendations to the Hungarian authorities concerning the electoral system, whilst noting that the 2011 law on election of members of parliament had addressed Venice Commission recommendations and the Constitutional Court ruling regarding disproportionate variations in the size of constituencies. However, the fact that constituency boundaries were drawn by parliament – rather than by an independent and impartial body as part of a transparent process on the basis of clear and widely accepted criteria – was highly problematic.[95]

50. In 2014 the OSCE/ODIHR also stated that the way in which the new constituency boundaries were drawn was "lacking transparency, independence and consultation, and allegations of gerrymandering were widespread". It further noted that when the single-member constituencies were drawn in 2014, five exceeded the 15% variation allowed by law and 17 others deviated from the national average by over 10%. Such deviations undermined the equality of the vote. The ODIHR recommended inclusion of provisions for a periodic review of constituency boundaries by an independent commission and some flexibility in adjusting them.[96] However, as noted by the Assembly rapporteur, Mr Walter, in 2015, since constituency boundaries are defined by a cardinal law, contrary to the Assembly's recommendation, such regular revisions would be difficult, if not impossible, to achieve.[97] The Assembly has called for wide consensus between all political parties on the compensation formula. It would seem this was not reached for the last elections.[98]

---

lack of genuine representation of minorities in the Hungarian Parliament, as the opinion of the "spokesperson" is only consultative and limited to minority issues; in addition, he recalls that Romania has made Hungary aware of the need, *inter alia*, to provide specific and more meaningful measures to prevent assimilation, ensure effective and efficient education in the Romanian language, provide proper and timely financing of cultural associations, media and churches and put an end to the "ethno-business", namely ensuring that subsidies allocated to the Romanian minority effectively benefit its members. We took note of these comments, recalling that the issue of national minorities was not included in the scope of this report and would therefore not be examined in detail.

92. Hungary's Law LXXIX of 2021 on taking stricter measures against paedophile offenders and amending certain child protection laws.

93. Opinion on the compatibility with international human rights standards of Act LXXIX amending certain Acts for the protection of children, adopted by the Venice Commission at its 129th Plenary Session (Venice and online, 10-11 December 2021), CDL-AD(2021)050.

94. "Democracy Digest: Hungary Lacks Pride", *Balkan Insight*.

95. Resolution 1941 (2013).

96. www.osce.org/odihr/elections/hungary/121375.

97. Doc 13806, "Situation in Hungary following the adoption of Assembly Resolution 1941 (2013)" (rapporteur: Mr Robert Walter, United Kingdom, EC).

98. Doc. 14450 Part 4.

51. In practice, the combined effect of the compensatory allocation mechanism, the way in which constituency boundaries were drawn (or even gerrymandered) and the fragmentation of opposition parties allowed Fidesz, which obtained 45.04% of constituency and party-list votes in 2014, to win two-thirds (66.83%) of parliamentary seats at that election.

52. Since then, the Constitutional Court has invalidated the previous electoral map and required constituencies to be made more proportionate in terms of the number of voters. Constituencies were redrawn to make them more equal, a positive development welcomed by the Assembly and the OSCE/ODIHR.[99] The opposition parties claimed, however, that the situation was still not fair. The need for an independent body to deal with the drawing of constituencies still had not been addressed, and the Assembly has noted that the main concern seemed to be not the law on election of members of parliament but the Electoral Procedures Act, which had not yet been examined by the Venice Commission.[100]

53. More recently, the amendments to the electoral law adopted in December 2020 changed the rules governing registration of national party lists. Parties and coalitions will have to stand candidates in at least 71 of the 106 single-member constituencies in 14 of the 19 counties as well as the capital (previously, the law required them to stand candidates in 27 constituencies across 9 counties and the capital). At the Monitoring Committee's request, the Venice Commission adopted in October 2021 an opinion on these electoral amendments. The Venice Commission deplored that this act had been adopted during a state of emergency, apparently without consultation, which is "neither in line with the Rule of Law Checklist, nor is it compatible with the Commission's Report on Respect for democracy, human rights and the rule of law during states of emergency: reflections and the Report on the Role of the opposition in a democratic Parliament". Moreover this act was adopted (once again) by means of a cardinal law, which is "problematic with regard to both the Constitution and ordinary laws". The Venice Commission noted that the act introduces a number of positive technical changes. However, the Venice Commission made several recommendations, including a recommendation to amend section 3 and section 68, by "significantly reducing the number of single-member constituencies and the number of counties in which each party needs to nominate candidates simultaneously in order to be able to run a national list of candidates".[101] NGOs denounce that the real purpose of the amendments is to force opposition parties onto a single list.[102] As a matter of fact, the Venice Commission concluded that the main effect of this electoral reform would be "to favour the incumbents".[103]

54. Several important issues mentioned above, together with the situation of the media (dealt with at greater length below), have a significant impact on the electoral process. The recommendations made by the ODIHR in 2018 have not been addressed by the government for the 2022 elections.[104] We also recall the recommendations made by the Commissioner for Human Rights, ECRI and the Advisory Committee on the Framework Convention for the Protection of National Minorities (ETS No. 157) to improve legislation and practice to combat hate crime and hate speech as well as xenophobic rhetoric in political discourse, even though "only isolated instances of negative rhetoric stigmatizing Roma" were observed by the ODIHR during its mission.[105]. We regret that the Additional Protocol to the Convention on Cybercrime concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems remains neither signed nor ratified, as urged by the Assembly in 2018.

### *3.3. Recent political developments: parliamentary elections of 3 April 2022*

55. General elections were held on 3 April 2022. Opposition parties had decided to unite forces to compete, and comply with the electoral amendments adopted in December 2020. Opposition parties feared at that time that this would push establishment of coalitions comprising parties with divergent programmes that could produce confusion or even rejection among their electorate.[106] As a matter of fact, in August 2020, six opposition parties across a broad political spectrum – the Democratic Coalition (DK), Dialogue for Hungary, the Hungarian Socialist Party (MSZP), Jobbik, Momentum, and Politics Can Be Different (LMP) – decided to

99. Resolution 2064 (2015).
100. Doc 13806.
101. Joint Opinion of the Venice Commission and the OSCE/ODIHR on the 2020 amendments to electoral legislation (Venice and online, 15-16 October 2021), CDL-AD(2021)039.
102. Corruption Monitor report 2020-2022.
103. CDL-AD(2021)039.
104. The OSCE/ ODIHR, IEOM Parliamentary Elections and Referendum 3 April 2022, Statement of preliminary Findings and Conclusions.
105. Ibid.
106. CDL-AD(2021)039.

form the coalition "United For Hungary" for the April 2022 parliamentary election, nominate a joint candidate for each constituency, organise primaries in September and October 2021 leading to the appointment of Péter Márki-Zay, Mayor of Hódmezővásárhely, as the opposition candidate for prime minister.[107]

56. The coalition formed by the Fidesz of Prime Minister Viktor Orbán and the KDNP won 54 % of the votes on the party list, and 52% of the votes in the constituencies,[108] which resulted in a 2/3 majority in parliament (135 seats out of 199). The "United For Hungary" coalition won 57 seats. The far-right party Our Home (MHM) came third with 6 seats. A representative of a national minority (the German minority) secured a parliamentary seat.

57. These elections were observed by a large delegation of the ODIHR and the OSCE Parliamentary Assembly.[109] ODIHR noted that election day was peaceful, with a voter turnout of 69.5%, and that the election administration managed the technical preparations professionally and efficiently and met all legal deadlines. In an inclusive process, the National Election Commission registered 55 nominating organizations, including 12 minority self-government, 6 national proportional lists including a total of 1 035 candidates (19,7% of which were women). Fundamental freedoms of association and assembly in the campaign were respected, and election participants were largely able to campaign freely.

58. ODIHR reached following preliminary conclusions: "The 3 April parliamentary elections and referendum were well administered and professionally managed but marred by the absence of a level playing field. Contestants were largely able to campaign freely, but while competitive, the campaign was highly negative in tone and characterized by a pervasive overlap between the ruling coalition and the government. Candidate registration was inclusive, offering voters distinct alternatives. The lack of transparency and insufficient oversight of campaign finances further benefited the governing coalition. The bias and lack of balance in monitored news coverage and the absence of debates between major contestants significantly limited the voters' opportunity to make an informed choice. The manner in which many election disputes were handled by election commissions and courts fell short of providing effective legal remedy. Women were under-represented in the campaign and as candidates".[110]

59. A referendum concerning the law on "Child Protection" (see below) was conducted on the same day (the legislative ban on holding concurrently a national referendum and elections had been lifted in November 2021). ODIHR assessed that the referendum legal framework was "largely inadequate for the conduct of a democratic referendum and does not provide for a level playing field for referendum campaigns". It did not guarantee "equal opportunities to campaign and voters were not informed in an objective and balanced manner on the choices presented to them nor on their binding effect". Positively, efforts had been made to harmonize administrative issues for the concurrent holding of the referendum and elections, however, the holding of simultaneous campaigns led to legal ambiguities on campaign rules.[111] In addition, "the Referendum Act does not prescribe the neutrality of public authorities, nor ban their use of public funds for referendum campaigns. Moreover, it guarantees equal opportunity to campaign in the broadcast media for parliamentary parties and the government, when it is the initiator of a referendum, rather than equal opportunity for the supporters and opponents of the referendum proposals. These aspects are at odds with international good practice. The law also does not have a clear definition of political advertisement for referendums. Moreover, neither the government nor the election bodies are legally bound to provide voters with objective and balanced information on the issues put to the referendum or the positions of the proponents and opponents on the issues, challenging voters' ability to make an informed choice."[112]

60. ODIHR also recalled that its prior recommendations, especially on election legislation, had not been addressed. Like in 2018, the main governing party continued to enjoy an undue advantage because of restrictive campaign regulations, biased media coverage and campaign activities that blurred the separation between political party and the State. Furthermore, the 2020 amendments to the election legislation constituted an undue barrier to participation of the opposition.

---

107. "Hungary's opposition gears up for 2022 election".
108. https://en.wikipedia.org/wiki/2022_Hungarian_parliamentary_election.
109. The election observation mission comprised 20 experts in the capital, 18 long-term observers deployed throughout the country and 312 observers from 45 countries deployed on election day.
110. The OSCE/ ODIHR, IEOM Parliamentary Elections and Referendum 3 April 2022, Statement of preliminary Findings and Conclusions.
111. Ibid.
112. Ibid.

61. The ODIHR election observation mission issued several recommendations to the authorities, including the need to review the legal framework for compliance with international obligations concerning electoral rights to ensure the democratic conduct of elections; encourage the representation of women during the campaign; level the playing field by preventing the overlap between the ruling coalition's campaign and the government's information campaign and the misuse of administrative resources; encourage transparency and accountability in campaign finances by reviewing the legislation and by enhancing the enforcement of the regulatory framework; review the election legislation to increase pluralities of opinions in the media to allow voters to make an informed choice and strengthen the efficiency of legal remedies for election disputes.[113]

62. There were also questions about voters living abroad.[114] The situation of voters living abroad differs depending on whether they maintained a residency inside the Hungarian territory. The ODIHR notes that the "differing modalities for out-of-country voting, depending on whether voters retain a domicile in Hungary or not, challenged the principle of equal suffrage".[115] We encourage the authorities to address this issue.

63. Finally, another development related to electoral matters was the adoption of the Eleventh amendment to Hungary's Fundamental Law by the parliament on 20 July 2022, timing local elections in Hungary to fall on the same day as European parliamentary elections. The amendment was passed with 140 votes in favor and 36 against, with a two-thirds majority. Local mayors and councillors who obtained their mandates in 2019 will stay in their positions until 1 October 2024, when the next EP elections are scheduled.[116] The authorities justified this amendment by the need to cut costs.

### *3.4. Amendment of the Fundamental Law through a special legal order*

64. In an earlier report, the Assembly rapporteurs pointed out that the Fundamental Law of Hungary (in other words, the Hungarian Constitution) adopted on 18 April 2011 "sets the constitutional framework and main organising principles for Hungarian society but leaves the detailed regulation and implementation of these constitutional principles to a large number of cardinal acts, which require a super-majority vote of two-thirds of MPs present to be adopted or amended".[117] Since then, 32 cardinal laws have been passed, containing detailed rules on operation of key institutions and exercise of certain fundamental rights.

65. From the outset the Venice Commission has expressed serious concerns about this Constitution and the impact of cardinal laws on the "functionality of a democratic system". It believes that too broad a use of cardinal laws is problematic in terms of both the Constitution and ordinary laws: "[T]here are issues on which the Constitution should arguably be more specific. These include for example the judiciary. On the other hand, there are issues which should/could have been left to ordinary legislation and majoritarian politics, such as family legislation or social and taxation policy. The Venice Commission considers that parliaments should be able to act in a flexible manner in order to adapt to new framework conditions and face new challenges within society. Functionality of a democratic system is rooted in its permanent ability to change. The more policy issues are transferred beyond the powers of simple majority, the less significance will future elections have and the more possibilities does a two-thirds majority have of cementing its political preferences and the country's legal order. Elections, which, according to Article 3 of the Additional Protocol to the European Convention on Human Rights (ETS No. 9), should guarantee the 'free expression of the opinion of the people in the choice of the legislature', would become meaningless if the legislator would not be able to change important aspects of the legislation that should have been enacted with a simple majority. When not only the fundamental principles but also very specific and "detailed rules" on certain issues will be enacted in cardinal laws, the principle of democracy itself is at risk. This also increases the risk, for the future adoption of eventually necessary reforms, of long-lasting political conflicts and undue pressure and costs for society. The necessity of a certain quorum may, however, be fully justified in specific cases, such as issues forming the core of fundamental rights, judicial guarantees or the rules of procedure of the parliament."[118]

66. Eleven years on, use of cardinal laws "beyond what is strictly necessary, and even in respect of detailed legislation," is still "questionable from a democratic perspective, as it makes it difficult to introduce reforms in the future".[119] The Ninth Amendment adopted in December 2020 aggravated this trend. The opposition stressed that the amendment was submitted, debated and adopted by the parliament while a

113. Ibid.
114. www.euractiv.com/section/all/news/hungarians-abroad-forced-to-make-tough-choices-to-vote/.
115. The OSCE/ODIHR, IEOM Parliamentary Elections and Referendum 3 April 2022, Statement of preliminary Findings and Conclusions.
116. https://hungarytoday.hu/parliament-adopts-11th-amendment-to-constitution/.
117. Doc 13229, paragraph 8.
118. Opinion on the new Constitution of Hungary adopted by the Venice Commission at its 87th plenary session (Venice, 17-18 June 2011), CDL-AD(2011)016, paragraph 24.

special legal order, namely a "state of danger" as defined by Article 53 of the Fundamental Law, was in place following the outbreak of the Covid-19 pandemic.[120] The Commissioner for Human Rights has warned that far-reaching legislative proposals, especially constitutional amendments, should not be introduced during states of emergency, as also pointed out by the Venice Commission,[121] since "opportunities for meaningful democratic discussion and public scrutiny are restricted during such periods". Ms Mijatović has therefore called on the Hungarian Parliament "to postpone the vote until after the state of emergency is lifted and to engage in broad consultations with the Hungarian public, who will be the first to feel the impact of these changes",[122] a request that has fallen on deaf ears. In its last opinion on electoral amendments, the Venice commission restated its criticisms on cardinal laws, stating that a too wide use of cardinal laws "is problematic with regard to both the Constitution and ordinary laws"[123].

67. It may be noted that during the pandemic period the Hungarian Government began by declaring a "state of danger" lasting from March to June 2020, allowing it to issue government decrees that suspend the application of certain acts of parliament or derogate from the provisions of acts. Such decrees, according to the Fundamental Law, are to remain in force for 15 days, after which parliament must provide consent to extend their force. The opposition noted that on 30 March 2020, when the "state of danger" was declared for the first time, on the initiative of the government, the parliament adopted an act that automatically extended the force of all current and future decrees until the end of the state of danger – an unknown date as it is the government that could terminate it. This prompted the opposition not to support this indefinite "state of danger", which also caused concern to the Secretary General of the Council of Europe (who pointed out that an "indefinite and uncontrolled state of emergency cannot guarantee that the basic principles of democracy will be observed and that the emergency measures restricting fundamental human rights are strictly proportionate to the threat which they are supposed to counter"[124]), to the President of the Parliamentary Assembly, Rik Daems, and to the European Council, which recommended that Hungary "ensure that any emergency measures be strictly proportionate, limited in time and in line with European and international standards and do not interfere with business activities and the stability of the regulatory environment".[125] On 16 June 2020, the parliament adopted two laws, LVII and LVIII of 2020, ending the automatic extension of the force of special government decrees and establishing a new "state of medical emergency", which could be extended by government decree (namely without parliamentary endorsement). This "state of medical emergency" still raises concerns with respect to Council of Europe values.[126] It was however supported by the opposition and declared by the government until 18 December 2020 and extended for another six-month period since then.

68. The Ninth Amendment adopted in December 2020 changed the constitutional provisions governing a "special legal order". These provisions (which will come into force in 2023) restrict a "special legal order" to three situations (instead of six), namely a state of war, a state of emergency and a state of danger – a simplification welcomed by the Venice Commission in its July 2021 opinion: it has helped clarify the circumstances in which these states of exception apply, thus making the law more intelligible; furthermore, the rules applicable – such as a two-thirds majority (instead of a simple majority as at present needed) to authorise the government to extend a state of danger – are considered consistent with the Venice Commission's recommendation on respect for democracy, human rights and the rule of law during states of emergency. The Venice Commission nevertheless recommended ensuring "participation of the opposition in the approval of the declaration of the state of emergency, and/or through *ex post* scrutiny of the emergency decrees or any extension of the period of emergency" with a two-thirds majority, and that "all political parties should be involved in the discussion before a possible decision to postpone elections".[127]

---

119. Opinion on Act CLI of 2011 on the Constitutional Court of Hungary adopted by the Venice Commission at its 91st plenary session (Venice, 15-16 June 2012), CDL-AD(2012)009, paragraph 47.
120. AS/Mon (2021) 09 rev – comments II.
121. Venice Commission report on "Respect for democracy, human rights and the rule of law during states of emergency: reflections", taken note of by the Venice Commission on 19 June 2020 by a written procedure replacing the 123rd plenary session, CDL-AD(2020)014.
122. Statement by the Commissioner for Human Rights on 20 November 2020.
123. CDL-AD(2021)039, op. cit.
124. Letter from the Secretary General of the Council of Europe, Marija Pejčinović Burić, to Viktor Orbán, Prime Minister of Hungary, 24 March 2020.
125. SWD (2020) 316) final.
126. See Doc. 15139, para. 18: Assembly rapporteur Mr Vladimir Vardanyan (Armenia, EPP/CD) stressed in his report of October 2020 on "The impact of the Covid-19 pandemic on human rights and the rule of law" that the state of medical emergency in Hungary is "administered by an "operative staff", bypassing cabinet government and parliamentary scrutiny. The state of medical emergency allows the government to suspend the activity of any body (not excluding parliament or the courts) and increases the role and powers of the police and army. Normal public procurement rules may be suspended and the Prime Minister may award contracts directly."

69. The Venice Commission also expressed concerns about the abolition of the National Defence Council (comprising the President of the Republic, the Speaker of the National Assembly, the leaders of parliamentary groups, the Prime Minister, the ministers and the Chief of the Defence Staff), which exercises substantial powers in a national crisis, and the vesting of its powers in the government – which is less broadly representative: although not incompatible, as such, with European standards, this results in a "concentration of emergency powers in the hands of the executive", which "cannot be considered an encouraging sign, notably in the absence of any clarification in the explanatory memorandum for the *ratio* or the necessity of such modification".

70. In its July 2021 opinion, the Venice Commission noted with concern that "the amendments were adopted during a state of emergency, without any public consultation, and the explanatory memorandum consists of only three pages". This swift procedure was "not in line with its recommendations in the Rule of Law Checklist, nor […] compatible with the Commission's Report on Respect for democracy, human rights and the rule of law during states of emergency and the Report on the Role of the opposition in a democratic Parliament". The Venice Commission reiterated "its previous warning against an 'instrumental attitude' of Hungary's governing majority towards the Fundamental Law, which should not be seen as a political instrument".[128]

71. The state of emergency related to the Covid-19 pandemic was due to last until 31 May 2022. Following the outbreak of the war in Ukraine in February 2022, the government submitted, on 4May 2022, an amendment bill to the Constitution introducing the possibility to declare a state of danger in case of war or humanitarian catastrophes in neighbouring countries.[129]

72. On 24 May 2022, the parliament approved the Tenth constitutional amendment, enabling the government to declare a state of danger "in the event of an armed conflict, war situation or humanitarian catastrophe in a neighbouring country" and authorised the government to rule by decree. The Prime Minister then triggered the state of danger, arguing that the war in Ukraine presented a danger to "Hungary, [its] physical safety, the energy supplies and financial safety of families and the economy".[130] The first measures announced by the Prime minister in this context are additional taxes on banks, insurers, large retail chains, energy and trading companies, telecommunication companies and airlines. Those taxes would serve at financing low utility tariffs policy and extra defence spending.[131]

73. During our visit, concerns were expressed by some NGOs about the timeframe of this state of danger (would it last as long as there is a war in Ukraine?) and that it could entail the risk that the government, which already enjoys a two-thirds majority in parliament, would bypass parliamentary debates and silence the opposition.[132] The Hungarian Helsinki Committee feared that this amendment would give a "*carte blanche*" to the government to override any act of parliament in basically any area and to restrict fundamental rights during a state of danger.[133]

74. As parliamentarians, we stressed, during our visit, that the newly declared 'state of danger' in Hungary should not weaken political dialogue and parliamentary oversight, all the more that the ruling party enjoys a two-thirds majority. It is paramount that the use of such a special legal order be limited to measures strictly linked to the consequences of the war and does not weaken political dialogue, parliamentary oversight and checks and balances which are crucial in times of crisis. The Venice Commission also stressed the crucial role of the opposition during a state of emergency in its 2020 report.[134]

75. The Hungarian authorities argued that the declaration of the state of danger due to the war in Ukraine was necessary to reach quick decisions, while the ordinary legislative procedure would take a least six weeks in parliament. They underlined that the Fundamental Law lists those rights, which cannot be subject to further limitations even under special legal order and adds that under a special legal order, the application of the

---

127. CDL-AD(2021)029.
128. Ibid., paragraph 84.
129. "Justice Minister Submits 10th Constitutional Amendment Proposal" (hungarytoday.hu).
130. "Government Declares State of Emergency Due to War", Hungary Today.
131. "Govt to Strip Extra Profits from Banks, Multinational Companies" (hungarytoday.hu).
132. "EU ministers urged by RSF and its partners to address a decade-long campaign to dismantle Hungary's independent media", RSF.
133. Information note on the Tenth amendment by the Hungarian Helsinki committee: Information note on the proposed 10th Amendment of the Fundamental Law – Hungarian Helsinki Committee.
134. "Participation of the opposition in the approval of the declaration of the state of emergency, and/or through ex post scrutiny of the emergency decrees or any extension of the period of emergency should be ensured". Venice Commission, Report on Respect for democracy, human rights and the rule of law during states of emergency: Reflections, CDL-AD(2020)014, cited in CDL-AD(2021)029.

Fundamental Law may not be suspended, and the operation of the Constitutional Court may not be restricted. They also stressed that under this state of danger, and previously under the Covid-19 related state of danger, the National Assembly had continued to function, holding regular plenary and committee sessions; the government had to report to the National Assembly about its measures introduced to curb the coronavirus pandemic regularly; this solution ensured democratic control over the activities of the government.[135] This approach however was not shared by opposition politicians we met.

### *3.5. Ensuring transparency of political processes and tackling corruption*

76. Transparency of decision-making processes and the quality of the legislative process are fundamental to good governance and respect for the rule of law. They are all the more important when a ruling party has a two-thirds majority, giving it political control over institutions. Transparency is therefore crucial to ensuring the smooth operation of democratic institutions, with the necessary checks and balances.

#### *3.5.1. Background information*

77. Hungary was once a forerunner among Central and Eastern European countries for adjustment to European standards. The country joined all major international anti-corruption treaties in the early 2000s, namely the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of the Organisation for Economic Co-operation and Development (OECD), the Criminal Law Convention on Corruption (ETS No. 173) and the Civil Law Convention on Corruption (ETS No. 174) of the Council of Europe, and the United Nations Convention against Corruption. The authorities also stressed the consistent stand of the Ministry of Interior against all forms of corruption, and the adoption of a medium-term National Anti-corruption Strategy for 2020-2022 and its connected Action Plan.[136]

78. Transparency International has however found that the country ended last decade among the worst performers in Europe, with a score of 43 on the 2021 Corruption Perceptions Index (44 in 2020) and ranked 73th (out of 180) (69 in 2020), having lost 27 places and 12 points since 2012.[137] The 2022 Special Eurobarometer on corruption shows that 91% of respondents and 75% of companies feel that corruption is widespread in the country.[138] The outbreak of the coronavirus pandemic and the government's response to its challenges have accelerated the erosion of democracy in Hungary. In a report from 2021, Transparency International found that most aid-funds related to the pandemic were allocated in a untransparent way, benefiting mainly to pro-governmental businesses.[139] The NGO Hungarian Civil Liberties Union (HCLU) also raises concerns over the lack of transparency in the grants of subsidies relating to the pandemic. The NGO notably states that conflict of interests exists about the grants of tourism subsidies.[140] Transparency International notes the growing political polarisation of Hungarian society: assessments of systemic corruption have been found to correlate with party sympathy. It has welcomed the criminalisation of informal payments in public health care whilst regretting the lack of protection for whistle-blowers.[141] The European Commission, while recognising the importance of the present legal framework for protection of whistle-blowers, calls for additional rules to make it more efficient.[142] NGOs also report a lack of willingness for citizens to report corruption, notably due to the lack of adequate incentives.[143]

---

135. AS/Mon (2021)09 rev – comments II.
136. AS/Mon (2021)09 rev – comments II.
137. The authorities challenged this index in their comments: "this perception indicator, which is a single figure, generated using indirect sources, is not a suitable means for characterising the real situation and the evolution of corruption over time. In addition, the CPI lacks scientific methodology, and the result is not verifiable, reconstructable and "transparent". Neither publicly available perception data, which are much more sophisticated than the CPI, nor objective statistical data can be used to infer a continuous deterioration of the corruption situation" and does not take into account the individual perception of corruption as reflected in the Eurobarometer survey. AS/Mon (2021) 09rev – comments II.
138. The average in the EU is respectively 68 % and 63%. Special Eurobarometer 523, Country factsheet Hungary July 2022.
139. "Transparency of tourism subsidies and exposure to corruption during the epidemic in Hungary" https://transparency.hu/wp-content/uploads/2021/12/TIHu_tourism_Subsidies.pdf.
140. Corruption Monitor report 2020-2022 https://tasz.hu/a/files/ENG-Korrupciofigyelo-keteves-osszefoglalo-2022-TASZ-3.pdf.
141. "Hungary's rule of law backsliding continues amidst the COVID-19 crisis" and "Hungarian society deeply divided over corruption", Transparency International.
142. Rule of Law Report Country Chapter on the rule of law situation in Hungary EUR-Lex – 52021SC0714 – EN – EUR-Lex (europa.eu).
143. Hungarian NGOs contribute to the European Commission's 3rd Rule of Law Report – Magyarország Amnesty International.

79. In recent months, deficiencies in access to information relating to the pandemic have also increased the risk of corruption. These concerns were raised in the last corruption report released by K-Monitor and HCLU. These NGOs noted that the authorities had acknowledged the increase corruption risks caused by the pandemic but regretted that no measures had been taken to address those risks.[144] These NGOs raised concerns about the lack of transparency during the management of the pandemic, notably the difficult access data of public interest, deeming it nearly impossible to obtain basic information on epidemiological control.[145] Restricted media access to hospitals triggered an alert by the Council of Europe Platform for the safety of journalists.[146] HCLU also questioned the misuse of public funds dedicated to epidemiology, which were spent on items unrelated to the epidemiologic crisis. More generally, transparency and accountability in public expenditure, including public procurements, remain an issue.

### *3.5.2. Transparency issues with respect to corruption prevention in political life and fight against money laundering*

80. The Group of States against Corruption (GRECO), which adopted its (fourth evaluation round) report on corruption prevention in respect of members of parliament, judges and prosecutors in 2015, noted limited progress in implementation of its recommendations and found that only five out of the eighteen have been implemented satisfactorily. Topics of concern include the need to improve the integrity framework of parliament, in particular to improve the level of transparency and consultation in the legislative process and to review the broad immunity enjoyed by members of the National Assembly, as well as to ensure the effective supervision and enforcement of rules of conduct, conflicts of interest and asset declarations.[147] GRECO notably called on the authorities to adopt a code of conduct for members of parliament (covering in particular various situations that could lead to a conflict of interest), to further develop rules obliging MPs to disclose in an *ad-hoc* manner potential conflicts between their parliamentary work and their private interests, to ensure a uniform format of asset declarations and to review the broad immunity enjoyed by MPs.[148]

81. Transparency of party funding must also be improved. Here again, this is a key issue for ensuring a level political playing field. Despite steps taken towards better transparency of party funding concerning the registration of political parties, the monitoring of those receiving State subsidies and the clarification of the sources of party income, GRECO depicted the overall picture as “disappointing” when it terminated its third round. GRECO assessed the overall situation regarding the transparency of political financing to a large extent the same as it was at the time the Evaluation Report was adopted in 2009.[149] More determined efforts need to be done in this area. The Evaluation report on Preventing corruption and promoting integrity in central governments (top executive functions) and law enforcement agencies (fifth round), which was adopted by GRECO in June 2022 but was not yet made public, could also provide useful guidance for the authorities as to the necessary reforms to be undertaken.

82. Concerns related to the insufficient transparency of party funding were also expressed by ODIHR in the last general elections: “As previously pointed out by ODIHR and GRECO, the lack of disclosure of donations maintains the opacity of campaign funding, at odds with international commitments and good practice. Despite previous ODIHR recommendations, there are no caps on individual donations, which further heightens the risks associated with the lack of transparency of the funding. The law provides for campaign spending limits. However, their effectiveness was undermined by extensive spending through entities other than the election contestants (“third parties”), which largely favoured the ruling party, and is unregulated despite previous ODIHR and GRECO recommendations. Funding of such entities is not transparent, leaving campaign funders unknown to the public. Substantial sums were spent on Facebook advertising, led by entities associated with the ruling party. Spending on referendum campaigns is not limited, which further allowed for the circumvention

144. Ibid.
145. Corruption Monitor report 2020-2022.
146. Platform to promote the protection of journalism and safety of journalists (coe.int).
147. Fourth Evaluation Round, Second Interim Compliance Report: Hungary, adopted on 25 September 2020 and published on 17 November 2020, GrecoRC4(2020)10.
148. Ibid. GRECO’s Third Interim compliance report (fourth evaluation round), which had been adopted on 3 December 2021, was published on 8 September 2022, GrecoRC4(2021)24.
149. Third Evaluation Round, Second Addendum to Second Compliance Report on Hungary, “Incriminations (ETS Nos. 173 and 191, GPC 2)”: “Transparency of Party Funding”, adopted on 24 March 2017, GrecoRC3(2017)2,. This report was published after the high-level mission of March 2019 requested by GRECO “Given the lack of information provided and the lack of progress in implementing the recommendations (..) in order to discuss on the spot with all stakeholders concerned ways to expedite the legislative and policy changes highlighted in the Interim Compliance Report”, GrecoRC4(2020)10.

of campaign spending limits. The most visible referendum campaign was conducted by the government. In these circumstances, election campaign spending limits, which were generally regarded as too low by several ODIHR EOM interlocutors, provided further advantage to the incumbency."[150]

83. On the positive side, the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL) states in its most recent compliance reports that Hungary has improved its legislation on politically exposed persons, which was reflected by MONEYVAL changing its rating for the Financial Action Task Force (FATF) Recommendation 12 from "partially compliant" to "largely compliant".[151] MONEYVAL recommended here that the notion of "close associates" should be broadened to include personal relationships as well as prominent members of the same political party, civil society organisation or labour union.[152] In May 2022, MONEYVAL confirmed that Hungary had improved measures to combat money laundering and terrorist financing. Hungary demonstrated good progress in the level of compliance with the FATF standards, which led to the upgrade of Hungary from "partially compliant" to "largely compliant" in three areas related to correspondent banking relationships, internal controls in financial institutions and transparency and beneficial ownership of legal persons.[153] Because of a number of other matters pending,[154] MONEYVAL decided that Hungary should remain in enhanced follow-up.

### *3.5.3. Relevant European Union findings concerning transparency issues*

84. The European Commission, in its 2020 and 2021 Rule of Law reports, highlighted deficient independent control mechanisms and close interconnections between politics and certain national businesses conducive to corruption, a systematic lack of determined action to investigate and prosecute corruption cases involving high-level officials or their immediate circle, the need to improve verification of disclosure of assets and declarations of interests through systematic checks and independent oversight, and the shrinking possibilities of civic oversight in the context of restrictions to media freedom, a hostile environment for civil society organisations and constant new challenges for enforcement of the rules relating to transparency and access to public information.[155] With respect to the award of European Union recovery funds, the European Commission also expects Hungary to reform its public procurement laws in order to curb systemic fraud and improve data transparency and accessibility: in 2020 the European Anti-Fraud Office (OLAF) established that Hungary had irregularities for nearly 4% of its spending of EU funds in 2015-2019, compared to an EU average of 0.36%.[156] Among member States, over this period Hungary had the highest number of OLAF investigations (43) that were closed with a financial recommendation (sent to the EU institutions or national authorities providing or managing EU funds to seek recovery of misappropriated EU funds to the EU budget).[157] In 2021 the European Commission acknowledged that "a number of OLAF investigations were completed with the support of the Hungarian anti-fraud coordination service".[158] The authorities also stressed that the indictment rate based on OLAF recommendations was almost double as compared to the EU average (67%-37%).[159] However, the number of OLAF investigations is still above the EU average.[160] In 2022, the European Commission remained concerned by "recent allegations regarding the existence of a corruption ring in management authorities linked to national and EU funds [which] raise concerns as to the lack of systemic oversight", by the "absence of a robust track record of investigations of corruption allegations concerning high-level officials and their immediate circle" and by the lack of judicial review for prosecutorial decisions not to investigate and prosecute corruption allegations. Risks of clientelism, favouritism and nepotism in high-level public administration remain unaddressed".[161]

---

150. Hungary, Parliamentary Elections and Referendum, 3 April 2022: Statement of Preliminary Findings and Conclusions, 4 April 2022.
151. Fourth Enhanced Follow-up Report, published in April 2021, MONEYVAL(2021)6.
152. Ibid., paragraph 15.
153. 5th Enhanced Follow-up Report, May 2022. MONEYVAL(2022)2_SR.
154. With regard to FATF Recommendation 15 (virtual assets and virtual asset service providers), which was amended after the adoption of the previous follow-up report for Hungary, the initial rating of "compliant" has now been changed to "partially compliant". Hungary is now "compliant" for five out of the 40 FATF recommendations and "largely compliant" for 29 others. It remains "partially compliant" for the remaining six.
155. European Commission, *2020 Rule of Law Report* on Hungary, SWD (2020) 316) final.
156. "Worried by 'systemic irregularities', EU ties recovery funds to Hungary procurement reform", *Reuters*.
157. SWD (2020) 316) final.
158. EUR-Lex – 52021SC0714 – EN – EUR-Lex, op. cit.
159. AS/Mon (2021)09 rev – comments II.
160. EUR-Lex – 52021SC0714 – EN – EUR-Lex, op. cit. In 2022, the European Commission noted the frequent practice of the Hungarian authorities to withdraw EU-funded projects in case of financial recommendations issues by OLAF or the opening of OLAF investigations, while amounts due are not systematically recovered from the economic operator who committed the irregularity or fraud. SWD(2022) 517 final.
161. SWD(2022) 517 final.

85. The European Commission has welcomed the strategic programme on integrity in public administration (2020-2022) started by Hungary in June 2020 for the purposes of strengthening e-administration and automated decision making to prevent corruption, increasing the efficiency of investigations, assessing corruption risks and evaluating the legal framework. However, the Commission regrets that the strategic anti-corruption framework does not include "actions in other areas relevant for corruption prevention, such as political party financing, asset disclosure, or regulation of lobbying and "revolving doors".[162]

86. In connection with the Covid-19 recovery plan, the European Commission is carrying out a review of respect for the rule of law and an appropriate anti-corruption framework before releasing EUR 7.2 billion of non-returnable grants to Hungary through the EU's Recovery and Resilience Facility (RRF),[163] pursuant to the Rule of Law Conditionality Regulation adopted on 16 December 2020, which entered into force on 1 January 2021.[164] EU member states are supposed to "ensure compliance with Union and national laws, including the effective prevention, detection and correction of conflict of interests, corruption and fraud, and avoidance of double funding" [165] in order to protect the European Union's financial interests. On 12 July 2021 the European Commission put off endorsing the recovery plan submitted by Hungary because not enough effort had been made to tackle corruption.[166] At the same time, at the request of members of the European Parliament from four political groups (EPP, the Greens, Renew Europe and the Socialists and Democrats), three legal experts published an analysis warning against the systemic dismantling of the rule of law and its threat to the European Union's financial interests in Hungary. The authors highlight the lack of transparent management of EU funds and the corruption with which the system is imbued, the lack of an effective national prosecution service to investigate and prosecute fraud, and the failure to guarantee independent courts to ensure that EU law is enforced.[167] On 10 June 2021, the European Parliament had called on the European Commission to "use all tools at its disposal, including the [Rule of Law Conditionality] regulation, to address the persistent violations of democracy and fundamental rights everywhere in the Union, including attacks against media freedom and journalists, migrants, women's rights, LGBTIQ people's rights, and freedom of association and assembly". It regretted the Commission's failure to take action and, on the basis of Article 265 of the TFEU [enabling an EU institution to take action for failure to act], urged the Commission to fulfil its obligations.[168] The European Commission however declined to take action within the two-month deadline; the President of the Commission, Ursula von der Leyen, explained that the letter sent by the President of the European Parliament was not "sufficiently clear and precise" and lacked concrete cases of EU law breaches that would merit the mechanism's immediate application.[169] However, on 27April 2022, the European Commission triggered the Rule of Law Conditionality mechanism against Hungary, arguing that structural issues in Hungary "are indicatives of breaches of principles of the Rule of law".[170]

87. Finally, we noted, on the positive side, that a co-operation agreement was signed in February 2022 by the Prosecutor General's Office and OLAF in order to better protect the EU funds from potential fraud and corruption. We also noted that discussions have been launched to address some of the European Commission concerns and unblock Hungary's access to the EU's recovery funds: in July 2022, the government pledged to reduce the proportion of all single-bidder public procurement procedures below 15%[171], increase time for public consultations before legislation, limit the number of times legislation is adopted under fast-track procedures, and signal its willingness to amend legislation to allow judicial review of the prosecution service's decisions not to pursue certain cases.[172] These questions are relevant for the

---

162. Ibid.
163. See Regulation (EU) 2021/241 of the European Parliament and of the Council establishing the Recovery and Resilience Facility, published on 12 February 2021. This sum was later reduced to €5.8 billion worth of grants, as the Hungarian economy had performed better than expected in 2021.
164. Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget. Hungary and Poland challenged this regulation in the Court of Justice of the European Union. On 16 February 2022, the Court validated the mechanism.
165. Questions and answers: The Recovery and Resilience Fund, European Commission document, 10 February 2021.
166. "Brussels withholds approval of Hungary's recovery plan", *Politico*.
167. The report, "The European Commission has to Cut Funding to Hungary: The Legal Case", was written by Kim Lane Scheppele of Princeton University, R. Daniel Kelemen of Rutgers University and John Morijn of the University of Groningen.
168. European Parliament resolution of 10 June 2021 on "Rule of Law situation in the European Union and the application of the Conditionality Regulation" (EU, Euratom) 2020/2092, P9_TA(2021)0287.
169. www.euronews.com/2021/08/25/eu-commission-misses-deadline-to-trigger-rule-of-law-mechanism-and-faces-potential-lawsuit.
170. "In major first, EU triggers power to cut Hungary's funds over rule-of-law breaches", *Politico*. As a result, the European parliament dropped its case against the European Commission in May 2022.
171. Their proportion currently stands at 17% for EU-funded tenders and 34.6% of those coming purely from the national budget.

issues raised in our report and could contribute to enhance the anti-corruption framework. At the same time, NGOs were quite sceptical about the efficiency of the measures proposed, if not implemented in good faith.[173]

*3.5.4. Impact of the surveillance legislation on fundamental freedoms: the Pegasus spyware case*

88. Another issue of concern emerged during the summer of 2021, when Forbidden Stories – an international consortium of media organisations – revealed that the Israeli cyber company NSO's spyware program Pegasus, officially designed for State agencies' use only, had been allegedly used since 2013 by 11 countries,[174] including Hungary, to perform extensive surveillance of journalists, activists, businessmen and even heads of states.[175] As of 2016, this spyware was capable of infecting Android and iPhones at distance, reading text messages, tracking calls, collecting passwords, location tracking, accessing the target device's microphone and camera, and harvesting information from applications. According to the lists obtained by Forbidden Stories, the phones of more than 300 Hungarian nationals, some of them known for being critical to the government, were identified as possible targets for infection. Further examination was conducted by Amnesty International's security team.[176] These targets included four journalists (including Szabolcs Panyi and András Szabó, investigative journalists at Direkt36[177] and Dávid Dercsenyi, a former journalist at the media hvg.hu, Zoltán Varga, owner of the Central Media Group, nine lawyers (including János Bánáti, the President of the Hungarian Bar Association)[178] and an opposition politician.[179] On 23 July 2021, the Regional Prosecutor's Office of Investigations of Budapest launched an investigation into the Pegasus spyware case under suspicion of illegally gathering information.

89. The authorities have dismissed the allegations as being based on "unsubstantiated claims"[180] and denied any illegal surveillance made since 2010[181]. The Minister of Justice Ms Varga however stated that "states must have the necessary tools to combat the many threats that they face today" and shared information about the number of authorisations granted for covert intelligence operations signed by her State Secretary (928 as of August 2021, a number on the rise since 2015) based on requests made by national security agencies[182], which actually do not require any court order.

90. In the case of Pegasus, the prosecution service concluded on 15 June 2022 that there had been no unauthorised covert information gathering or illegal use of covert means and closed the investigation.[183] The investigation of the National Authority for Data Protection and Freedom of Information launched in August 2021 concluded for its part, in January 2022, that the use of the Pegasus spyware by Hungarian authorities was in complete adherence to Hungarian Law, though confirming that the Hungarian authorities had used the Pegasus spyware "for covert surveillance of information systems and premises, and that information gathering subject to authorisation [of the Ministry of justice] had been carried out with respect to several persons identified in the press".[184] The reasoning of the investigation will remain classified until 2050.[185] In brief, legal provisions in place seemed to have allowed the authorities to use the Pegasus software to gather information

172. Ibid.
173. www.euractiv.fr/section/justice-affaires-interieures/news/fonds-europeens-lue-pourrait-se-laisser-duper-par-viktor-orban-selon-des-experts/.
174. Azerbaijan, Bahrain, Hungary, India, Kazakhstan, Mexico, Morocco, Rwanda, Saudi Arabia, Togo and the United Arab Emirates.
175. "Pegasus: The new global weapon for silencing journalists", Forbidden Stories.
176. "Hungary: The government must provide a meaningful response to the Pegasus scandal", Amnesty International, 20 July 2021.
177. Ibid.
178. "President of the Hungarian Bar Association and several other lawyers targeted with Israeli spyware Pegasus", Telex.
179. "Hungarian journalists and critics of Orbán were targeted with Pegasus, a powerful Israeli cyberweapon", Telex.
180. "Gov't Officials Either Dismiss or Avoid Hungary's Pegasus Scandal", hungarytoday.hu.
181. See the reply of the Hungarian authorities of 13 August 2021, following the publication of an alert by the Council of Europe on 26 July 2021 ("Journalists Targeted with Pegasus Spyware", Protection and safety of journalists (coe.int)).
182. Namely the Information Bureau responsible for non-military intelligence, the Constitution Protection Office mainly dealing with counterintelligence and internal security, the Military National Security Service, the Special Service for National Security, a so-called "hybrid organisation" providing covert surveillance services to national security and law enforcement agencies and the Counter-terrorism Centre. In: Telex: What is Hungary's procedure for secret surveillance?
183. SWD(2022) 517 final.
184. SWD(2022) 517 final. See also: "Data Authority Head: Use of Pegasus Justified in All Cases", Hungarytoday.hu.
185. Committee on Legal Affairs and Human rights: introductory memorandum on Pegasus and similar spyware and secret state surveillance, AS/Jur(2022)04.

about lawyers, civil society activists and politicians on national security grounds, what we found quite problematic. The Assembly will further examine this case, as the Assembly Committee on Legal affairs and Human rights is currently preparing a report on Pegasus and similar spyware and secret state surveillance.[186]

91. As a matter of fact, this is not a new issue: the National Security Services Act governing secret surveillance does not provide for an independent external oversight and fails to provide sufficient safeguards against abuses, leading to violations of the right to privacy and family life, as ruled by the European Court of Human Rights in 2016 in the *Szabó and Vissy v. Hungary* case, given that "the ordering is taking place entirely within the realm of the executive and without an assessment of strict necessity, that new technologies enable the Government to intercept masses of data easily concerning even persons outside the original range of operation, and given the absence of any effective remedial measures, let alone judicial ones". The Court concluded that there had been a violation of Article 8 of the Convention [right to respect for private and family life]."[187]

92. The Committee of Ministers, which is supervising the execution of the *Szabó and Vissy v. Hungary* judgment, received an updated action plan in January 2021; the Hungarian authorities indicated that "the examination of the requirements stemming from the judgment in terms of legislative amendments, which is currently underway, is expected to take some time" and provided information about the control exerted by the parliamentary Committee of National Security and the data protection authority.[188] At its last meeting, the Committee of Ministers noted that "the legislative framework found by the Court to be in violation of the Convention has remained unchanged in substance since the judgment became final in 2016, and this despite the fact that the authorities acknowledged the necessity of a comprehensive legislative reform some time ago, in 2017".[189] In another pending case,[190] the Hungarian authorities were requested to indicate whether the possibility that Mr Hüttl, a lawyer often working with NGOs, allegedly wiretapped during a phone conversation with an MEP in 2015, could be subjected to secret surveillance without external/judicial control "represent an unjustified/disproportionate potential interference with his rights under Article 8".[191] The Hungarian authorities should therefore take the necessary measures to redress the legal deficiencies highlighted by the European Court of Human Rights in the surveillance legislation, given their possible impact on individuals' fundamental rights and their potential adverse effects on democracy and human rights (including media freedom and the protection of the sources of journalists, which is covered by article 10 of the European Convention on Human Rights).

#### *3.5.5. Issues raised by the newly created "public-interest asset management foundations performing public functions"*

93. The adoption of the Ninth Amendment in December 2020 introduced, in the Fundamental Law the concept of "public-interest asset management foundations performing public functions" (also called "public-interests trusts"). The boards of these foundations will initially be appointed by the government and will then co-opt their successors. The boards will not be subject to public audit, which has raised some questions about the political control of these foundations and (lack of) rules relating to board members' conflicts of interests.

---

186. Ibid.

187. Judgment of the European Court of Human Rights, *Szabó and Vissy v. Hungary* (Application no. 37138/14), of 12 January 2016, para. 89. There are also many documents issued by the Council of Europe on these principles, including the 2013 Committee of Ministers' "Declaration on Risks to Fundamental Rights stemming from Digital Tracking and other Surveillance Technologies", Assembly Recommendation (2024) 2013 and Resolution (1954) 2013 "National security and the right to information", Assembly Resolution (2045) 2015 and Recommendation (2067) 2015 "Mass surveillance" and the 2015 Venice Commission report on "Update of the 2007 report on the democratic oversight of the security services and report on the democratic oversight of signals intelligence agencies". Since 1998 Hungary is also party, to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108), and signed its amending Protocol (ETS No. 223, not yet in force) in 2019.

188. 1398th meeting (March 2021) (DH) – Action plan (20/01/2021) – Communication from Hungary concerning the Szabo and Vissy v. Hungary (Application No. 37138/14).

189. Committee of Ministers 1428th meeting 8-9 March 2022, CM/Notes/1428/H46-15.

190. *Tivadar Hüttl v. Hungary* (Application No. 58032/16). Mr Hüttl had turned to the parliamentary National Security Commission, which declined to investigate the case. Mr Hüttl complained to the European Court under Article 8 about potential secret surveillance and the lack of remedial measures.

191. Communication from the European Court of Human Rights to the Hungarian authorities in Hüttl v. Hungary (coe.int) (16 October 2019).

94. The authorities explained that "the provision on public asset management foundations performing public functions – several higher education institutions operate in this form – was intended to establish the independence of these organisations from the government. (…) The new constitutional provision strengthens the independence of these foundations from the executive by guaranteeing legal certainty, long-lasting legal stability and institutional independence with a high-level political consensus".[192]

95. In its July 2021 opinion,[193] the Venice Commission again questioned why this provision had to be included in the Fundamental Law and "why its specifications are to be regulated by a Cardinal Act, which requires a two-thirds majority to be adopted or modified, making it difficult for any future lawmaker to reverse the effects of the amendments, that is, to reclaim the transferred assets and to reverse the reorganisation of the management of the foundations at stake".[194] The Venice Commission therefore called on the authorities to reconsider this article: public-interest asset management foundations performing public functions ought to be regulated by statutory law, "clearly setting out all relevant duties of transparency and accountability for the management of their funds (public and private), as well as appropriate safeguards of independence for the composition and functioning of the board of trustees".[195] The Venice Commission noted that the inner workings of the newly established foundations, together with their revenue and expenditure, might be considered "private" [after a second transfer of this "public money" to another entity] and therefore shielded from civil society and media scrutiny, as they are not subject to freedom of information requests by the citizens and the media, thus undermining the State's transparency and freedom of information.[196]

96. Lastly, the law passed on 27 April 2021 created the legal framework for the functioning of these trusts and allowed the establishment of a non-governmental agency to manage public assets, and of 32 foundations of a similar nature. This law caused serious concern to the united bloc of six opposition parties, which saw it as a "transfer of public funds to private fortunes".[197] Large numbers of foundations would take over the running of State universities – including affiliated institutions such as hospitals – and be entrusted with tasks covering most areas of public life.[198]

97. On top of the questions raised by these new foundations in terms of transparency and accountability, the Venice Commission was also concerned about the impact of this constitutional provision on academic freedom: "The submission of public universities to the management of a board of trustees, initially appointed by the government and subsequently released from democratic supervision, risks threatening their academic freedom and weakening their autonomy. This development represents a dangerous trend as it resonates with the recent unfortunate withdrawal of a prestigious university from Budapest." The Venice Commission thus invited the authorities to "take into consideration the role of universities as places of free thought and argumentation, adequately guaranteeing their academic freedom and autonomy".[199]

98. This development is not a trivial issue and has a meaningful impact on public institutions, with long-lasting effects enshrined in the above-mentioned Cardinal Law: the European Commission noted in July 2022 that donations of public assets given to these public interests trusts amounted to 2% of the GDP. In addition, "over 70% of the [106] board members have links to the current Government or personally to the Prime Minister, including current and former ministers and State secretaries, government commissioners, managers of the central bank, members of Parliament, (deputy) mayors, vocal members of pro-government groups, relatives", while less than 25% of the board members have academic background and only three persons have had a relevant international professional career. "Out of 21 universities that have undergone the 'model change', 19 have boards with a majority of members thus linked to the Government."[200] It is therefore unclear how this transformation process has in effect strengthened the independence of these institutions from the

192. AS/Mon (2021)09 rev – comments II.
193. CDL-AD(2021)029.
194. Ibid., paragraph 57.
195. Ibid., paragraph 71.
196. Ibid., paragraph 70.
197. "Viktor Orban, Fidesz plot to maintain their hold on Hungary", *DW*, 1 May 2021. The author notes that the Mathias Corvinus Collegium (MCC), "originally a small and relatively insignificant organisation set up by Fidesz supporter and businessman, Andras Tombor, to train people for leadership positions" ended up acquiring 10% of shares in both the Hungarian oil and gas giant, MOL, and the pharmaceuticals company, Gedeon Richter (estimated to be worth $1.2 billion), and receiving "valuable real estate". The NGOs K-monitor and Transparency International Hungary noted that the MCC has received at least 1.4 billion €, a sum equivalent to the aggregate annual budget of the entire higher education sector in Hungary. Cited by the European Commission in its 2021 Rule of Law report, SWD(2021) 714 final, footnote 214.
198. "Viktor Orban, Fidesz plot to maintain their hold on Hungary".
199. CDL-AD(2021)029, paragraph 66.
200. SWD(2022) 517 final, footnotes 150 and 248.

government, given the appointment procedure of the board members (first by the government, then by co-optation of the members), the lack of rules governing conflicts of interest and the lack of oversight by State audit.

99. In conclusion, a number of Council of Europe monitoring bodies – whose findings are relevant for assessing the quality of a country's governance through the operation of its democratic institutions – have reported recurring challenges and shortcomings that the authorities have yet to address. Their findings are shared by the European Union. The ruling coalition has had a "supermajority" almost uninterruptedly since 2010. Consequently, given the Hungarian Parliament's significant constitutional powers, particularly for appointment of senior officials and adoption of cardinal laws requiring a two-thirds majority, there is less political pluralism – which is the hallmark of a democratic system – embedded in the political system and State institutions. This situation, combined with the effects of the electoral system and the lack of transparency in decision making, has seriously damaged the functionality of the democratic system, as already highlighted by the Venice Commission: the concerns that it raised in 2011 regarding the possible instrumentalisation of the Constitution and cardinal laws are still valid (the adoption of the Ninth Amendment to the Constitution is another example). In addition, the legislative changes over the past ten years – which have had an impact on freedom of association and the situation of the media, for example, (potentially) at variance with Council of Europe standards – have also had an impact on the democratic operation of institutions.

## 4. Media situation

### *4.1. The media situation, a persistent concern*

100. Freedom of expression and media freedom have been longstanding concerns in Hungary ever since 2010 and the adoption of the media package that was meant to bring Hungary's media legislation into line with European standards. This package was criticised by, among others, the then Commissioner for Human Rights, Mr Thomas Hammarberg,[201] and experts commissioned by the OSCE Representative on Freedom of the Media at the time, Ms Dunja Mijatović.[202] This criticism led the Hungarian authorities to make some adjustments, particularly in 2013. However, these adjustments did not put an end to the reservations being voiced, as is apparent from the 2014 report of the Commissioner for Human Rights, Mr Nils Muižnieks,[203] and the Venice Commission's 2015 opinion on media legislation.[204]

101. As regards the Parliamentary Assembly, in 2017, Mr Volodymyr Ariev (Ukraine, EC/DA), rapporteur for the Committee on Culture, Science, Education and Media on "Attacks against journalists and media freedom in Europe",[205] dealt with the subject at length, as did Mr Cezar Florin Preda (Romania, EPP/CD), rapporteur for the periodic review of Hungary on behalf of the Monitoring Committee.[206] Lord George Foulkes (United Kingdom, SOC), rapporteur for the Committee on Culture, Science, Education and Media on "Threats to media freedom and journalists' security in Europe" also devoted to it much attention in his report in 2020.[207]

102. Taking into account the concerns raised by these rapporteurs, the Parliamentary Assembly, in Resolution 2141 (2017), called on the Hungarian authorities to "strengthen media pluralism and diversity and ensure transparency of media ownership, especially where a media outlet is effectively held or controlled by a commercial entrepreneur who has been awarded public contracts".[208] A year later, in Resolution 2203 (2018), it urged the Hungarian authorities "to reverse the country's decline in ratings regarding media freedom and to cease the strong political intervention in the Hungarian media market".[209] Lastly, in Resolution 2317 (2020), it called on Hungary "to immediately address the grave problem of media pluralism: the politically and economically biased licensing media conglomerate which concentrates 78% of the Hungarian media closely associated with the ruling party is totally incompatible with freedom of expression and information".[210]

---

201. See his report on "Hungary's media legislation in light of Council of Europe standards on freedom of the media" (CommDH(2011)10).
202. See their analyses and assessments in September 2010 ("Analysis and assessment of a package of Hungarian legislation and draft legislation on media and telecommunications") and February 2011 ("Analysis of the Hungarian media legislation").
203. See his report following his visit to Hungary from 1 to 4 July 2014, CommDH(2014)21, 16 December 2014.
204. CDL-AD(2015)015.
205. Doc. 14229, paragraphs 10 to 17.
206. Doc. 14450 Part 4 (HU), Report, paragraphs 31 to 43.
207. Doc. 15021, paragraphs 29, 52, 71, 87 and 104.
208. Resolution 2141 (2017), paragraph 13.4.
209. Resolution 2203 (2018), paragraph 10.3.3.
210. Resolution 2317 (2020), paragraph 9.2.

103. On 30 March 2021 the Commissioner for Human Rights, Ms Dunja Mijatović, published a memorandum on freedom of expression and media freedom in Hungary, stating that it was "high time for Hungary to restore journalistic and media freedoms".[211]

104. Lastly, for its first series of reports on the rule of law in European Union member states, the European Commission chose "media pluralism" as one of its topics and raised a number of concerns in the case of Hungary.[212]

105. It was international organisations' continuing interest in media freedom and the persistent nature of their concerns that led us to choose this issue as one of the subjects for the present report. In order to properly get acquainted with it, we held a day and a half of remote interviews and we also analysed the wealth of official material, including the Hungarian authorities' extremely detailed and well-documented comments on the above-mentioned Commissioner's memorandum. Our interviews were conducted with Hungarian media experts, representatives of international organisations, Hungarian media representatives, including of the Central European Press and Media Foundation, better known by its Hungarian acronym "KESMA", and representatives of the Hungarian media regulator, the National Media and Infocommunications Authority (the Media Authority), also known by its Hungarian abbreviation "NMHH".

106. In their comments to this report, the authorities emphasised that freedom of expression is safeguarded in Article IX of the Fundamental Law; the legal framework guarantees safeguards for editorial and journalistic freedom of expression; the regulatory framework for media activities has been developed in consultation with the European Commission and the Venice Commission; all decisions of the Media Council on the merits of the case can be challenged before court. The Media Act stipulates that the diversity of media services has a particularly important public value. The protection of diversity extends to avoiding the formation of ownership monopolies and any undue restriction of competition on the market. And finally, the Hungarian authorities are of the view that "Hungary is one of the few Member States where genuine pluralism prevails in the media and in ideological debates, as well as in the general opinion. In contrast to the Western European media landscape massively dominated by leftist and liberal outlets, the Hungarian situation is more balanced as conservative and Christian Democratic views also have a meaningful access to publicity."[213]

### *4.2. Some background*

107. According to the World Press Freedom Index, published annually by Reporters without Borders (RSF), Hungary is 85th out of 180 countries in 2022, with a slight improvement compared to 2021,[214] due to greater consideration given to press freedom on the internet.[215] In 2013, Hungary was ranked 56th, showing a trend of constant and quite significant decline since then. The independent media rating by Freedom House is 2 out of 4, putting Hungary in the "partly free" category. It had the "free" status in the 2016 Freedom on the Net rankings.

108. The political scene in Hungary is highly polarised, as are the news media, too. From the discussions that we had, it emerged that this polarisation was not a new phenomenon. However, it had apparently become much more acute since 2010. We were also told that since the 1989-1990 political transition, as in most countries in Central and Eastern Europe, the media scene in Hungary had been characterised by a relatively small market for print media, a strong tendency by news media to reflect political opposites, limited professional recognition of journalism and a high degree of government intervention. In addition to the latter, the relative underdevelopment of the media market was said to have the effect of undermining the financial viability of most news media outlets and making investment in them unprofitable.

### *4.3. Topics of concern*

109. Most of the people to whom we spoke agreed that the legal framework governing media activity and protecting freedom of expression was not especially problematic in itself. They were referring to the constitutional provisions on media freedom and pluralism and to sector-specific laws such as the Media Act and the Freedom of the Press Act. This assessment is shared by the Centre for Media Pluralism and Media Freedom. In its 2020 and 2021 Rule of Law report for Hungary, the European Commission made reference to the Media Pluralism Monitor (MPM 2020-2021)[216] developed by the Centre for Media Pluralism and Media

211. See memorandum CommDH(2021)10 and the Commissioner's statement.
212. SWD(2020) 316 final.
213. AS/Mon (2021)09 rev – comments II.
214. Hungary, RSF.
215. "Hungary Moves up to 85th Place in Press Freedom Ranking", Hungary Today.

Freedom and co-funded by the European Union and the European University Institute. The 2020 MPM conclusions show that the area in which there was the least threat to media pluralism was "basic protection", namely that offered in particular by the legal framework governing the overall media sector, which was rated as "medium", However, there was one important reservation: the independence of the Media Authority. All the Council of Europe bodies, the Venice Commission, the Commissioner for Human Rights, the Assembly and the European Commission are in agreement here and we will deal with it in more detail below. The 2021 MPM report reconfirmed those findings and established that the lower risk to media plurality is the "fundamental protection".[217]

110. The Media Authority consists of three separate elements: the President of the Authority, the Media Council and the Office of the Media Council. The head of the Media Authority is appointed for a non-renewable nine-year term by the President of Hungary on the Prime Minister's recommendation and has very significant powers regarding appointment of the Authority's main decision makers. He or she also chairs the Media Council. The latter has four other members elected by parliament at the same time as the chair, also for a non-renewable nine-year term. The authorities explained that the Media Council is an independent body of the Authority, vested with legal personality, reporting to parliament, subject only to Hungarian law, and cannot be instructed within their official capacity; in addition, the Media Act expressly excludes the possibility for a representative, official, employee of a political party, or any person engaged in party political activities, to be a member of the Media Council[218] The Venice Commission notes in its above-mentioned 2015 opinion, in paragraph 62, that "compared to many other European regulatory authorities, the Hungarian Media Council has very vast powers". It gives a long list of these powers, which include approval of candidates to be appointed as executive directors of public media service providers and allocation through the Media Service Support and Asset Management Fund, MTVA, of funding to public media service broadcasters and national production companies. Given the extent of these powers, the members of the Media Council ought to be perceived as impartial. Yet, as the Venice Commission reported in 2015, its members "in spite of their qualifications or otherwise, are perceived by the media community as forming part of the same political texture", namely that of the government majority. This was also the view expressed by the Commissioner for Human Rights in her memorandum and was confirmed by the co-rapporteurs' interviews in 2021. The procedure by which parliament appoints its four members is supposed to ensure a degree of political consensus in their choice, which is the argument repeated by the Hungarian authorities. In fact, this is not the case. The four members appointed by parliament are nominated by unanimous decision of an *ad hoc* parliamentary committee. This committee consists of one member from each political group, each with a weighted vote reflecting the size of that group. However, if the committee is unable to present four nominees within the prescribed time-limit, it can nominate candidates by a majority of at least two-thirds of the weighted votes. This is exactly what happened in December 2019, when four new members were appointed to the Media Council. While the opposition parties nominated their candidates before the September deadline, the government parties (Fidesz and KDNP) did not. They systematically refused the opposition's nominees and only allowed the *ad hoc* committee to present candidates supported by the majority, since the latter held over two-thirds of seats in parliament. In other words, the mechanism put in place to prevent nomination of candidates being blocked by failure to reach a unanimous decision does not promote pluralism when the majority holds two thirds of the seats in parliament, since they can then nominate anyone they want without even trying to reach a compromise with the opposition. Already in 2015, the Venice Commission expressed the opinion that the two-thirds rule, "instead of ensuring pluralism and political detachment of the regulatory body, in fact 'cements' the influence of [the political] group [with the two-thirds majority] within the regulatory body and protects this influence against changing political winds. The scheme of appointment and

---

216. The MPM assesses risks to media pluralism using 25 key indicators covering four areas: basic protection, market plurality, political independence and social inclusiveness.

217. MPM, 2021 Results – Centre for Media Pluralism and Freedom (eui.eu).

218. AS/Mon (2021)09 rev – comments II.

The authorities have also stressed the impartiality of the media monitoring performed by the National Media and Infocommunications Authority. The Authority's official register, listing hundreds of media service providers (285 linear radio and 361 linear audiovisual media service providers) operating in Hungary, "does not (and cannot) contain any information on the political affiliation of the media service providers operating media services and whether they can be considered as oppositional, government related or independent. Currently, there are two media service providers with significant powers of influence (hereinafter SPI) in Hungary, TV2 Zrt. (the media service provider of TV2) and M-RTL Zrt. As regards the political affiliation of the media service providers with SPI, some opinions suggest that TV2 Zrt. is likely a pro-government affiliate, while M-RTL Zrt. is rather considered to be independent or oppositional". From January 2019 to May 2022, the authorities stressed that there were no significant differences between the two SPI media service providers, neither in the number of proceedings conducted nor in the amount of fines imposed. The Authority conducted administrative proceedings and applied legal sanctions as follows: TV2 Zrt: 35 proceedings, a total of 64 042 000 HUF fine, one warning; M-RTL Zrt: 28 proceedings, total of 63 353 250 HUF fine, one warning.

replacement of the members of the Media Council introduced in 2010 made any future change in the composition of this body very difficult without the support of Fidesz/KDNP coalition, and that remains for many years to come." [219]

111. The stronger safeguards for nomination of Media Council members introduced in 2013 and concerning mainly the appointment of its chair, the conditions of this appointment and the non-renewability of the term of office, are therefore insufficient and have left the question of independence unresolved. Yet the Venice Commission had detailed potential paths for establishing a system reflecting the country's political diversity and ensuring that the main political parties and social groups have fair representation in the Council, in particular by opening it up to members of the media profession and allowing civil society groups to participate in the nomination process. It also advocated reducing the term of office of the Media Authority's president and removing some of his/her powers of appointment.[220] Nézőpont, a think tank considered close to the government, published a study[221] that reflects the Hungarian authorities' arguments. The study claims that, on the one hand, the Authority's independence is "solid" compared with practices in other European Union member States, and that, on the other hand, the Media Authority punishes conservative media more severely than the opposition media. The European commission also raises concerns about the Media Authority independence.[222]

112. Our second topic of concern relates to media market plurality, for which the MPM rates the risk as high (82%) in 2021, this score was of 71% in 2020, this augmentation is notably due to the raising of risk to media viability.[223] As already mentioned, this was also the conclusion reached by the Assembly in the above-mentioned Resolution (2020) 2317. At the time it mainly concerned the establishment in 2018 of KESMA. This was the outcome of a merger of over 470 media outlets described as "government-friendly" by the European Commission. Actually, almost all Fidesz-friendly media owners transferred the ownership rights of their media holdings to KESMA. Their companies joined the foundation, all of them without any type of compensation for the owners.[224] The merger was effected by a decree declaring it to be "of strategic national importance", the result of which was to remove it from any scrutiny by the Competition Authority and the Media Authority. Three reasons were evoked by our interlocutors: the merger was designed to save print media – which is possible, but KESMA also covers television channels, radio broadcasters and online media; it was prompted by economic considerations, since the conglomerate's size allowed economies of scale; and it responded to the desire to establish a group able to counterbalance the voice of opposition media. Whatever the actual reasons for this merger, it has had far-reaching consequences. According to a study by the Mérték think tank, in terms of the revenue generated by media outlets in this market segment, "pro-government media" – that is, KESMA, media outlets still outside KESMA, and the State broadcaster – control some 80% of the news media market and current affairs coverage.[225] NGOs report that there are "no real ownership constraints in the Hungarian legislation" and allow therefore an important concentration of medias.[226] The Hungarian authorities question whether this media concentration exists. The Prime Minister, Viktor Orbán, has thus told the German press that all objective studies show that half of the media outlets are critical of the government,[227] and the above-mentioned Nézőpont study reported that conservative and liberal media shared the public equally.

113. The authorities also stated that the creation and operation of KESMA "did not impact disproportionately the operation of the media market and did not have a detrimental effect on media pluralism and the right to diverse information. KESMA's market position and its influence cannot be solely assessed based on ownership" and that "KESMA's position in the Hungarian media market and its role in shaping public opinion" could be assessed taking into account "the power of influencing public opinion of media outlets owned by KESMA".[228]

114. However, since 2018, the trend towards greater media market concentration seems to have grown. According to MPM, for instance, the Media Council refused permission for a merger between RTL television, seen as independent, and the digital firm, Central Media, but allowed a merger between the publisher, *Lapcom*, the *Radio 1* network and the *TV2* television company under what was termed a pro-government

219. CDL-AD(2015)015, paragraph 64.
220. Ibid., paragraphs 70 and 71.
221. "Increasing diversity: ten facts about the media in Hungary", September 2020.
222. EUR-Lex – 52021SC0714 – EN – EUR-Lex, op. cit.
223. MPM2021 Results – Centre for Media Pluralism and Freedom, eui.eu.
224. Mérték Media Monitori, "Media landscape after a long storm, The Hungarian media politics since 2010", December 2021
225. Mérték, "Fidesz-friendly media dominate everywhere", 2 May 2019.
226. Contributions of Hungarian NGOs to the European Commission's Rule of law report, op. cit.
227. Welt am Sonntag, 20 December 2020.
228. AS/Mon (2021)09 rev – comments II.

owner. In July 2020 the editor-in-chief of the most widely read independent news media website in Hungary, *Index.hu*, with some 1.5 million readers a day at the time, was dismissed, leading to the departure of virtually all the journalists and the establishment of a new news site, Telex.hu.[229] The dismissal occurred in the context of two, at first sight, unrelated events. In March of the same year, according to the Mérték think tank, *Index.hu* and another website, *444.hu*, were attacked by pro-government media outlets on the ground that they were spreading false information about the Covid-19 pandemic for purely financial reasons.[230] Also in March, according to Euronews, a businessman linked to the government, Mr Miklos Vaszily, said that he had acquired a 50% stake in the company that was selling advertising for the *Index.hu* website. The dismissal of the editor-in-chief of *Index.hu* is to be seen against this background and was thought sufficiently credible by the European Commission to be mentioned in its Rule of Law report. Last but not least, in September 2020 the Media Authority refused to renew the licence of the largest opposition radio station, *Klubrádió* Budapest, which went off air in February 2021. The Media Authority defended the non-renewal of the licence on the ground that *Klubrádió* had failed to provide legally required data from 27 March to 3 May 2017, a failure that *Klubrádió* does not dispute and for which it had paid fines. Since this failure was deemed to be a "repeated legal violation" under the Media Act, the Media Authority was obliged to take it into account and not renew the terrestrial broadcasting licence. In a judgment dated 9 February 2021, the Budapest Regional Court ruled entirely in the Authority's favour. This judgment was upheld by a Supreme Court's (Curia) ruling on 17 June 2021. At the same time, the owner of *Klubrádió* replied to a call for tenders issued by the Media Authority to allocate the frequency that had been free since February. He was excluded from the tender process and challenged this exclusion. Oddly enough, the call for tenders was cancelled by the Media Authority, which nevertheless issued a six-month provisional broadcasting licence to one of the unsuccessful bidders, *Spirit FM*, said to be close to the evangelical church. The Supreme Court ruled against the appeal of *Klubrádió*, stating that the decision of the Media Authority was in adherence with the law.[231]

115. Furthermore, the Media Authority's initial decision not to renew the *Klubrádió* licence led the European Commission, as a first step, to protest in a letter to the Hungarian authorities, in which it reminded them of their undertaking to respect the EU Charter of Fundamental Rights, which protected freedom of expression and information as well as the freedom to conduct a business, and asked them to maintain the licence provisionally until a final court decision had been made.[232] Since the Authority dismissed this protest and did not wait for the ruling of the Curia, the Commission initiated an infringement procedure against Hungary on 9 June 2021. It held that Hungary had violated Directive (EU) 2018/1972 of 11 December 2018 establishing the European Electronic Communications Code. The European Commission believes that the Media Authority's decision to refuse to renew the *Klubrádió* licence was disproportionate and non-transparent and thus in breach of EU law. The Commission also considers that the Hungarian Media Act has been applied in a discriminatory way in this particular case.

116. Key elements of these rules are the principles of proportionality and non-discrimination. The Commission believes that the decisions of the Hungarian Media Council to refuse renewal of *Klubradio*'s rights were disproportionate and non-transparent and thus in breach of EU law. The Commission also considers that the Hungarian national media law has been applied in a discriminatory way in this particular case. As a result, the Commission sent, on 9 June 2021, a letter of formal notice to Hungary, which had two months to reply to the arguments raised by the Commission and decided, on 15 July 2022, to refer Hungary to the Court of Justice of the European Union. This procedure is still ongoing, and the Hungarian Government specified that it has addressed all the Commission's questions in detail – both the questions raised in the letter of formal notice of 9 June 2021 and in the reasoned opinion of 2 December 2021.[233]

117. The decision not to renew the licence was taken after *Klubrádió* had seen its advertising revenue melt away from 2010 onwards, after it had lost its twelve local frequencies and after it had to broadcast in Budapest with two-month provisional licences between 2011 and 2013.[234] This concatenation of events seems clearly to follow a pattern.

---

229. Direkt 366 has provided more details about the Index case in Inside Viktor Orbán's war for Index, Hungary's most influential news website, 18 March 2022.
230. Mérték, "The end of days for independent media in Hungary?", 24 March 2020.
231. Supreme Court Rules Against Gov't-Critical Klubrádió over 92.9 Frequency (hungarytoday.hu).
232. "Klubrádió: EU asks Hungary to keep radio station on the air as MEPs weigh in on Commission", *Euronews*,16 February 2021.
233. AS/Mon (2021)09 rev – comments II.
234. "Hongrie : Klubrádió réduite au silence sur la bande FM" ("Hungary: Klubrádió silenced on FM"), *La Croix*, 15 February 2021.

118. Another development followed the decision not to renew the licence of *Klubrádió*: on 12 April 2022, the Media Council refused to renew the licence of *Tilos Rádió*, an independent radio known for its critical political and cultural programmes. The Council of Europe Platform for the Safety of journalists has triggered an alert concerning the situation. The Media Council justifies this blocking because of "serious and repeated violations of Media Law". Reporters without borders, on the contrary, considered that "by using minor administrative failings as its grounds for refusing to renew *Tilos Rádió*'s licence, the Media Council is repeating the strategy it employed in September 2020 to strip *Klubrádió*, Hungary's biggest independent radio station, off its licence".[235]

119. The authorities have provided, in their comments, extensive information about the national regulatory environment related to the licensing and renewal of media service rights and denied that the *Klubrádió* case was discriminatory or followed a pattern, as *Klubrádió* had "failed to meet the clear, proportionate and non-discriminative legal requirements of renewal, and also wasn't able to regain its media service right in the licensing process". The authorities also stressed that the legality of the Media Council's decisions in the *Klubrádió* case has been fully reviewed by the Hungarian courts; final court rulings confirmed that the decisions of the Media Council are fully lawful and that both the Hungarian legislation and the procedures in individual cases are fully in line with the provisions and principles of the relevant EU directive; and the Hungarian Government had no influence on the operation of independent authorities or the judiciary.[236]

120. Furthermore, regarding media concentration, in Resolution 2141 (2017) the Assembly called for strengthening of the rules on transparency of media ownership. The European Commission noted in its 2021 Rule of Law report that despite the Media Act's detailed rules to prevent such concentration, the 2020 and 2021 MPM considered the situation with regard to transparency of media ownership and news media concentration to be ones of high risk (75% and 84%).

121. Our third concern relates to political interference through market distortion. The 2021 MPM considers that the Hungarian media are exposed to high risk with regard to political independence, rating this risk as 75%. Direct intervention by the authorities is rare. On the other hand, they exercise considerable influence through the advertising that they buy in the media, and through government-aligned investors. According to the MPM, in 2020 and 2021 the State was responsible for a third of all advertising expenditure in the media market. In 2019, 75% of this spending went to pro-government media. For 2020, the Mérték think tank quotes even higher figure: 86%.[237] Already in Resolution 2141 in 2017, the Assembly called on the Hungarian authorities to "ensure that advertising contracts involving public authorities and State companies are concluded with all media in a fair and transparent manner".[238] The 2021 Rule of Law report of the European Commission reports that 85 % of the State advertising expenditure is directed toward pro-governmental medias.[239] The authorities however underlined that advertising expenditure based on typical civil law agreements is not subject to media administration; the Media Council or the [National Media and Infocommunications] Authority are therefore not entitled to investigate advertising market developments or to take measures in relation to advertising expenditure.[240]

122. Our fourth topic of concern refers to public access to information, which is sometimes hampered. In his 2018 periodic review of Hungary, Mr Preda noted that in 2015 new amendments to the Freedom of Information Act had imposed restrictions on access to public information and enabled State bodies to charge persons requesting information an advance for "information request processing costs", which could obviously affect journalists' work, and the Assembly called on the Hungarian authorities to "take appropriate measures to increase transparency and accountability regarding the right to access to information".[241] During our visit to Budapest, media representatives confirmed their concerns about these issues. They also deplored the extended delay (from 15 to 45 days, renewal once) given to public authorities to process information requests.

123. Lastly, some interlocutors we spoke to mentioned the authorities' treatment of some independent media and/or journalists that tended routinely to hamper them in their work when they were critical of the government. They also told us that they did not fear physical attacks, such as those suffered by some journalists in other Council of Europe member States. The legislation adopted during the pandemic which allows to make dissemination of false information relating to Covid-19 pandemic subject to a prison sentence

---

235. "Viktor Orbán's regime continues to crush media pluralism in Hungary", RSF.
236. AS/Mon (2021)09 rev – comments II.
237. Mérték suggests that the Hungarian State's advertising spending in 2020 was distributed as follows: 37% to the KESMA conglomerate, 49% to pro-government media other than KESMA and 14% to "other" media.
238. Resolution 2141 (2017), paragraph 13.3.
239. EUR-Lex – 52021SC0714 – EN – EUR-Lex, op. cit.
240. AS/Mon (2021)09 rev – comments II.
241. Resolution 2203 (2018), paragraph 10.3.3.

of up to five years had not resulted in any journalists being jailed. The Platform was concerned that the Hungarian authorities might use this legislation to threaten critical and independent media outlets.[242] Further restrictions were also imposed during the pandemic: on 29 January 2022, the Hungarian Government passed a decree which – despite a Supreme Court ruling to the contrary – ensured journalists from independent media could be barred from reporting from inside hospitals.[243]

124. Since 2015, 22 alerts concerning Hungary were issued by the Council of Europe's Platform to Promote the Protection of Journalism and Safety of Journalists related to action having chilling effects on media freedom or harassment and intimidation of journalists[244] – none was related to attacks on the physical safety and integrity of journalists in the last five years. The last alerts concern the targeting of journalists with Pegasus Spyware (updated in February 2022, see above) and the decision of the Media Council to block the renewal of the licence of *Tilos Rádió* (in June 2022).[245] The Hungarian authorities have usually replied, but sometimes their responses were unsatisfactory. For example, it was the case of the alert concerning publication by the Hungarian internet portal, 888.hu, of a list of journalists accused of serving the interests of the American billionaire of Hungarian origin, George Soros. Hungary's representative replied that the article in question fell under editorial freedom. The number and content of these alerts lead us to believe, as suggested by the European Commission in its Rule of Law report, that independent media are indeed facing systemic obstruction and intimidation. In general, we call on the Hungarian authorities to get rid of all statutory provisions and practices likely to have a chilling effect on freedom of expression. In this respect, we reiterate the importance of decriminalising defamation, currently carrying a three-year prison sentence, and urge the Hungarian authorities to reverse the provisions introduced by the Authorisation Act (Law No. XII of 30 March 2020) allowing the institution, by decree, of a prison sentence of up to five years for dissemination of false information.

125. Given all these concerns, one of our interlocutors described the media system as "hybrid", using the terminology employed by Freedom House to rank States' political regimes in terms of democracy. This ranking extends from "consolidated democracy" to "consolidated authoritarian regime" by way of "semi-consolidated democracy", "transitional or hybrid regime" and "semi-consolidated authoritarian regime". The fact that this parallel was drawn indicates the current level of concern regarding the situation of the media in Hungary.

126. Another issue highlighted by some NGOs relates to the importance of Russian disinformation in Hungarian public broadcast and the funding of broadcasters by Russia. This problematic has become more acute with the war in Ukraine. The HCLU has stated that "despite restrictive measures put in place by the European Union targeting Russia Today and Sputnik, Russian war propaganda has been continuously disseminated in Hungary". It noted that "one of the main sources of Russian disinformation without proper countering is Duna Media", the Hungarian public service media which includes several television and radio channels as well as a news agency. The Hungarian Authorities enabled its dissemination by not sanctioning "in cases [Duna media] presents disinformation as truth" or disseminates "the same notions and ideas that serve the Russian narrative without providing context or countering arguments" or direct quotes from sanctioned Russian sources. The HCLU lodged a complaint to the European commission in this respect.[246]

127. New concerns have been raised concerning social media: in 2021, NGOs reported about the creation of a fund dedicated to pro-governmental social media influencers. This fund (Megafon) is sponsoring influencers to broadcast pro-governmental messages. In 2021, the second biggest political advertiser on

242. Platform to promote the protection of journalism and safety of journalists (coe.int).
243. "Just two days after the judgment, the government passed a decree, which provides that decisions on press access and accreditation come under the exclusive jurisdiction of the government centre in charge of managing the pandemic, the Operational Tribunal. That body will have discretionary powers to decide on which journalists can film or record interviews on the premises of health care facilities, including the power to overrule decisions by hospital directors that would welcome media". Alert of 9 February 2022 published on the Platform to promote the protection of journalism and safety of journalists (coe.int).
244. Mention may be made here of a personal attack on an Austrian journalist by the national TV broadcaster, MTV, for provocative questions in 2021, the recall of *Forbes* magazine from news stands by decision of a court in 2020, new restrictions imposed on journalists working in the Hungarian Parliament in 2019, anti-Semitic posters stigmatising two *Index.hu* journalists in 2019 and the taking to task of a *Politico* correspondent by a government spokesperson in 2017. See Platform to Promote the Protection of Journalism and Safety of Journalists.
245. "Media Council blocks Tilos Radio licence renewal", Platform to promote the protection of journalism and safety of journalists (coe.int).
246. Russian disinformation in Hungarian public broadcast media: complaint to the European Commission, HCLU.

Facebook was the government itself, followed by the Fidesz.[247] This issue was particularly important considering the last electoral campaign, 60% of Facebook spending during the campaign were reportedly in support of the Fidesz.[248]

128. All the topics of concerns presented above have in common a clear erosion of media pluralism in Hungary. The media situation has therefore remained a matter of concern until today, leading the Platform for the Safety of Journalists to state in 2022 that "within the European Union, Hungary has established the most advanced level of state capture of the media".[249]

### *4.4. Possible impact of European Union pressure*

129. The following case illustrates the influence that the EU regulation can have, indirectly, on the media situation: the tax on advertising and advertising revenues. In 2014 the Hungarian Parliament passed a law creating a new tax on media advertising revenues with a rate that increased according to a media outlet's net turnover: this progressive tax had six different rates. The Commissioner for Human Rights then pointed out the risk that this tax was actually targeting the *RTL Klub* television channel, "commonly seen as the last remaining major independent television channel", and could in fact "curb media freedom".[250] The Venice Commission also stated that this tax could be regarded as an individual confiscatory measure in disguise, in breach of Article 1 of Protocol No. 1 to the European Convention on Human Rights, which guaranteed peaceful enjoyment of possessions.[251] Last but not least, the Assembly invited the Hungarian authorities to reconsider this tax in Resolution 2141 (2017).[252] In March 2015 the European Commission initiated an investigation procedure on the basis of the rules relating to State aid. It considered that the tax created a selective advantage for media companies with a low level of advertising turnover to the detriment of media companies with a high level of advertising turnover, and this advantage was deemed to be State aid. In June 2015 the Hungarian Parliament substantially altered the method of calculating the advertising tax by reducing its progressive nature to two rates, which were much lower than the previous higher rates. This change was not considered sufficient by the European Commission but was held to be so by the General Court of the European Union, which ruled in the Hungarian authorities' favour in a judgment of 27 June 2019 (Case T-20/17), upheld by the Court of Justice of the European Union in a ruling dated 31 March 2021 (Case C-596/19 P).

130. Because the EU law on competition and State aid can have a considerable impact on the media situation, several complaints have been lodged with the European Commission alleging breaches in these areas. The co-rapporteurs were told that in 2016 a complaint (No. 45463) was lodged by the former member of the European Parliament, Benedek Jávor, *Klubrádió* Budapest, and the Mérték think tank. The complainants stated that the Hungarian authorities' method of financing public service broadcasting was having serious anti-competitive effects and would cause market distortions favouring government narratives and hampering independent media. In early 2019 the European Commission received another complaint (No. 53108) analysing the Hungarian State's media advertising expenditure between 2006 and 2017 and finding that it was distributed according to criteria that were political rather than economic, hence distorting competition[253]. Sixteen media freedom organisations, including several partners of the Council of Europe's Platform for the Protection of Journalism and Safety of Journalists, sent two letters, dated 2 September 2020 and 26 February 2021[254], to the Executive Vice-President of the European Commission, Ms Margrethe Vestager, also the Commissioner for Competition. They emphasised the importance of these complaints in the Hungarian context, regretted that the 2016 complaint had not yet been investigated and maintained that the media freedom environment was deteriorating not only in Hungary but also in Poland. In our capacity as co-rapporteurs, we hope that the European Commission will investigate these complaints within a reasonable time and will recognise the implications that interpretation of EU legislation can have for media pluralism.

---

247. Contributions of Hungarian NGOs to the European Commission's Rule of Law report, op. cit.
248. "Political Parties Spent HUF 3 Billion during Campaign Period on Facebook Alone" (hungarytoday.hu).
249. Safety of Journalists Platform 2022, report on "Defending Press Freedom in times of tension and conflict". The Platform defines media capture as "the indirect control of private media by a government via its cosy relations with – or pressure on – media owners and vested interests", with governments deploying "the full range of instruments, and in particular arbitrary powers to allocate subsidies, advertising, public contracts, to reach that goal" and resulting in "the consolidation of a powerful government-friendly media system which frames the national discourse and excludes opposition or dissident voices".
250. See CommDH(2014)21, paragraphs 51 and 57.
251. See CDL-AD(2015)015, paragraph 107.
252. Resolution 2141 (2017), paragraph 13.2.
253. See footnote 237.
254. International Press Institute, letters dated 2 September 2020 and 26 February 2021.

### *4.5. The media during the 2022 parliamentary elections*

131. The role of media is essential in electoral campaigns. In 2018, ODIHR, which noted that voters had a wide range of political options, had however expressed several concerns, citing "a pervasive overlap between state and ruling party resources, undermining contestants' ability to compete on an equal basis", "intimidating and xenophobic rhetoric, media bias and opaque campaign financing [which] constricted the space for genuine political debate, hindering voters' ability to make a fully-informed choice related to coverage", extensive media coverage of the campaign "yet highly polarised and lacking critical analysis due to the politicisation of media ownership and influx of the government's publicity campaigns" and newscasts and editorial outputs of the public broadcaster clearly favouring the ruling coalition.[255]

132. In 2022, ODIHR reiterated these concerns, noting "extensive bias in a number of broadcast and online media against United for Hungary and in favor of the government and Fidesz, often without clear distinction between the coverage of the government and the party. This has deprived voters from receiving accurate and impartial information about the main contestants, thus limiting their opportunity to make an informed choice." The ODIHR also noted "the absence of debates among the major electoral competitors, along with the independent media's limited access to public information and activities of national and local government officials".[256]

133. Concerning media ownership and media funding, the OSCE noted in 2018 that the media was largely dependent on their owners' financial subsidies and/or government advertisements and that the latter were distributed among the media through restricted public tenders, lacking transparency and without any provision for auditing by an independent body. It concluded that such an environment limited the scope for critical reporting and pluralism, including during the election campaign. For example, its media monitoring showed that the government had been the leading political advertiser, taking 51% of prime-time political advertising, while the time devoted to voter education over the same period was more than three times less. Attention was therefore again drawn to the economic and political influence of government advertising.[257]

134. The ODIHR mission reiterated these concerns in 2022, noting that "extensive government advertising campaigns were focused on promoting economic achievements, family support and national security, reinforcing the main campaign messages of Fidesz". It also stated that "the government and state-affiliated companies are dominant in the advertisement market, and the distribution of the advertisement funds to medias outlets mainly benefits outlets that support the government".[258]

135. The MTVA foundation, which has overall responsibility for the content of the public broadcaster Duna Television, had been criticised in 2018 by the OSCE for its lack of independency; the head of the MTVA foundation had been appointed, without an open competition, by the chair of the Media Council, raising question about the latter's powers. The Media Council had also nominated candidates for executive director of the public broadcaster. In 2022, following verbal complaints on the lack of access and public protests by the United for Hungary coalition, MTVA provided each contestant with one five-minute time slot in their morning program.[259]

136. In 2018, the OSCE came back to the Assembly's longstanding call to decriminalise defamation, currently carrying a prison sentence of up to three years and suggested substituting civil sanctions in order to avoid the chilling effect that such provisions could have on journalists. It also listed three other recommendations to improve media issues during election campaigns.[260] In 2022, ODIHR remained concerned about media during the campaign, noting that "the extensive government advertising campaigns and biased news coverage in the public and many private media provided a pervasive campaign platform for

---

255. See ODIHR Limited Election Observation Mission Final Report, 27 June 2018, pp. 1 and 2.
256. The OSCE/ODIHR IEOM Hungary, Parliamentary Elections and Referendum 3 April 2022, Statement of preliminary Findings and Conclusions.
257. See ODIHR Limited Election Observation Mission Final Report, 27 June 2018, pp. 1 and 2.
258. The OSCE/ODIHR IEOM Hungary, Parliamentary Elections and Referendum, 3 April 2022: Statement of Preliminary Findings and Conclusions.
259. Ibid.
260. The following recommendations contained in the above report are relevant: 4, 21, 22 and 23:

*"4. To level the playing field, steps should be taken to separate government administration and party campaigning, including by adopting legislation that would define and explicitly prohibit the abuse of administrative resources in a campaign.*

*21. Government advertisement contracts should follow a transparent procurement process, according to a clear set of criteria, in a manner that does not inhibit fair competition, and be subject to audit by an independent body. Government information activities should strictly avoid any appearance of seeking to influence voting.*

the ruling party. The campaign opportunities in the media for other parties were significantly limited by the constitutional prohibition on paid political advertisement and scarce allocation of the free airtime by only a few media".[261]

137. We hope that the Hungarian authorities will take heed of our comments, which illustrate our concerns. The idea of "pluralism" entails the possibility of criticising the authorities without being systematically accused of "bias". We therefore call on the Hungarian authorities to address all outstanding concerns and comply with Recommendation CM/Rec(2016)4 of the Committee of Ministers on the protection of journalism and safety of journalists and other media actors, and in particular, with the principles in its appendix. For the record, they provide, that "States have a positive obligation to guarantee pluralism in the media sector, which entails ensuring that a diversity of voices, including critical ones, can be heard."[262]

## 5. Independence of the judiciary

### *5.1. A long-standing concern*

138. Hungary's judicial system has undergone a number of reforms since 2011, the year when a new Constitution was adopted. While, at the time, the Venice Commission considered the "adoption of a new Constitution, aiming to consolidate Hungary as a democratic State based on the principles of separation of powers, protection of fundamental rights and the rule of law" to be commendable,[263] a number of European organisations subsequently expressed fears concerning worrying developments in the judiciary.

139. As early as in January 2012, for instance, the Commissioner for Human Rights, Thomas Hammarberg, noted "steps taken in Hungary which might undermine the independence of the judiciary".[264] He was referring to the fact that over 200 new judges were to be appointed following the lowering of the retirement age for judges and that the power to appoint them was concentrated in the hands of a single politically appointed individual, namely the President of the National Office for the Judiciary (NOJ). He also regretted the premature departure of the President of the Curia, the judicial body superseding the Hungarian Supreme Court, three and a half years before the normal end of his term of office, owing to legislative and constitutional changes. This criticism came after the Venice Commission had initially expressed doubts about the constitutional provisions that allowed this lowering of the retirement age for judges[265] before adopting a firm stance on the legislative provisions lowering this limit and preventing the former President of the Supreme Court from remaining in the Curia.[266] In its 2012 opinion, the Venice Commission made clear that it was examining the issue of the retirement age for judges in terms of judicial independence[267] rather than discrimination (on grounds of age). It was on the latter grounds that the Court of Justice of the European Union ruled against Hungary on 6 November 2012, since its legislation on the lowering of the retirement age was held to be in breach of Directive 2000/78/EC of 27 November 2000. As for the premature termination of the term of office of President of the Supreme Court, the European Court of Human Rights ruled against Hungary on 23 June 2016 in the Baka judgment for violation of Article 6.1 (access to a tribunal), and Article 10 (freedom of expression) of the Convention. It considered, amongst other things, that "the premature termination of his [the former President of the Supreme Court's] mandate was prompted by the views and criticisms that he had

---

*22. The legislative framework and existing practices affecting the ability of media organisations and journalists to operate freely and professionally should be revised to conform with OSCE commitments and other international obligations, including with regard to the independence of media regulatory bodies.*

*23. Criminal defamation provisions should be repealed in favour of civil sanctions."*

261. The OSCE/ODIHR IEOM Hungary, Parliamentary Elections and Referendum, 3 April 2022: Statement of Preliminary Findings and Conclusions.

262. Paragraph 15 of the Appendix to Recommendation CM/Rec(2016)4 reads as follows: "Media pluralism and diversity of media content are essential for the functioning of a democratic society and are the corollaries of the fundamental right to freedom of expression and information as guaranteed by Article 10 of the Convention. States have a positive obligation to guarantee pluralism in the media sector, which entails ensuring that a diversity of voices, including critical ones, can be heard. Independent media regulatory authorities can play an important role in upholding media freedom and pluralism and States should therefore safeguard their independence. The adoption and effective implementation of media-ownership regulation also plays an important role in this respect. Such regulation should ensure transparency in media ownership and prevent its concentration where this is detrimental to pluralism. It should address issues such as indirect and cross-media ownership, and appropriate restrictions on media ownership by persons holding public office."

263. CDL-AD(2011)016, paragraph 141.

264. Statement of 12 January 2012.

265. CDL-AD(2011)016, paragraph 108.

266. CDL-AD(2012)001, paragraphs 102 to 115. All the other Supreme Court judges remained in office.

267. Ibid., paragraph 104.

publicly expressed in his professional capacity"[268] concerning bills of the government majority that all related directly to legal issues. Moreover, as the Court pointed out, "the premature termination of the applicant's mandate undoubtedly had a 'chilling effect' in that it must have discouraged not only him but also other judges and court presidents in future from participating in public debate on legislative reforms affecting the judiciary and more generally on issues concerning the independence of the judiciary".[269]

140. While a constructive dialogue between the Hungarian authorities and the European Commission did make it possible to find a solution to the lowering of the retirement age for judges, the developments outlined above have raised concerns that have not been dispelled since.

141. Since 2011, the Venice Commission has adopted a number of opinions on legislative and constitutional reforms affecting the legal world and constitutional justice. In 2020, in its second interim compliance report for the fourth evaluation round on corruption prevention in respect of members of parliament, judges and prosecutors, GRECO concluded that the overall low level of compliance with the recommendations remained "globally unsatisfactory" with regard to the evaluation report published five years earlier in 2015.[270] In her 2019 report following her visit to Hungary,[271] the Commissioner for Human Rights noted that a series of reforms of the judiciary during the 2010s had drawn concern about their effects on the independence of the judiciary. Moreover, in its resolution of 12 September 2018 calling on the European Commission to initiate an Article 7.1 procedure under the Treaty on European Union, the European Parliament stated that the second concern prompting its call was "the independence of the judiciary and of other institutions and the rights of judges".[272]

### *5.2. Some background*

142. Hungary has district courts, which are courts of first instance, together with regional courts, courts of appeal and the Curia, which used to be the Supreme Court and is responsible for ensuring uniform application of the law. The Constitutional Court, which consists entirely of members elected by parliament and which underwent radical reform in 2012, is separate from the court system. The Fundamental Law prescribes a unified court system and courts administration. Taking into account concerns raised by international bodies,[273] the Hungarian Government confirmed in 2019 that it would not introduce an organisationally separated administrative court system.[274]

143. Hungary's justice system is well endowed with human resources, since the number of judges and prosecutors per 100 000 inhabitants is well above the median for Council of Europe member States. It is somewhat less well off in terms of financial resources, and the salaries of judges are well below the median, although not those of prosecutors.[275] A substantial rise in judicial salaries came into effect in 2020 (60% over 3 years), which is to be welcomed and is likely to increase judicial independence provided that it is distributed fairly and transparently. According to the European Commission, digitalisation of the justice system is high overall, and efficiency in civil and administrative cases, partly calculated on case-handling times, is very high. These aspects suggest a sound and effective justice system. Yet, according to the European Commission, judicial independence is perceived as average among the general public and very low among companies, although the latest figures show an improvement.[276]

### *5.3. Topics of concern*

144. The main concerns are four in number.

145. The first relates to the power imbalance within the judiciary and the ensuing risks for judicial independence.

---

268. ECHR, 23 June 2016, *Baka v. Hungary*, paragraph 151.
269. Ibid, paragraph 173.
270. GrecoRC4(2020)10 and Greco Eval IV Rep (2014) 10E.
271. CommDH(2019)13.
272. OJEU, 23.12.2019, C 433/66.
273. Including by the Venice Commission (see CDL-AD(2019)004), and the Commissioner for Human Rights (see CommDH(2019)13).
274. AS/Mon (2021) 09 rev – comments II.
275. CEPEJ, country profiles, see Hungary.
276. SWD(2020) 316 final, p. 3.

146. As noted by the Venice Commission, Hungary was the first former communist country to establish an independent judicial body, the National Council of Judges.[277] This council, in which judges were strongly represented, took over broad court administration powers previously exercised by the Ministry of Justice. However, after a first attempt to reorganise the system of "checks and balances" within the judiciary,[278] the new majority elected in 2010 believed that the Council suffered from a number of weak points and was unable to effectively address certain systemic problems, such as overburdening of the courts, particularly in Budapest. To introduce more effective administration of justice, the new majority decided on a radical overhaul of the judicial system. Rather than remedying the shortcomings of the National Council of Judges, it opted to create a dual system without an equivalent in any other member State, according to GRECO:[279] a new National Office for the Judiciary (NOJ) on the one hand and a National Judicial Council (NJC) on the other.[280] The NOJ had a president elected by parliament by a two-thirds majority from judges with at least five years' experience as such, for a nine-year term of office. Two 2011 laws – Law CLXII on the legal status and remuneration of judges and Law CLXI on the organisation and administration of courts of Hungary – vested this president with all the administrative powers of the former National Council of Judges. The NJC, which "shall supervise the central administration of courts"[281], consisted of 15 members, all judges elected by a majority vote by their peers, and was supposed to supervise the NOJ. In its first opinion on the above two laws, the Venice Commission found that the main problem was the concentration of powers in the hands of a single person, namely the President of the NOJ. The Venice commission in its last opinion concerning the Act on the organization and administration of the Courts reaffirms this critic.[282] It also considered that the NJC could hardly conduct effective supervision and that, as an organ of judicial self-government, it had "scarcely any significant powers and its role in the administration of the judiciary [could] be regarded as negligible".[283] This Venice Commission opinion, on top of the criticisms from other Council of Europe bodies and particularly the Commissioner for Human Rights, led, on the initiative of the Secretary General of the Council of Europe, to the establishment of a constructive dialogue with the authorities. This dialogue initially resulted in genuine advances, since a balance was restored between the powers of the presidents of the NOJ and NJC, according to the Venice Commission, until an amendment to Hungary's Fundamental Law "jeopardised", as the Venice Commission put it, the progress achieved through this dialogue.[284] This constitutional amendment – the fourth – bolstered the office of the NOJ President by putting it on a constitutional level and giving him or her the power to exercise "central responsibilities of the administration of the courts", while the "bodies of judicial self-government", namely the NJC, merely "participate in the administration of the courts","without the NJC even being mentioned in the Fundamental Law"[285] at that time. This was actually redressed on 1st October 2013, when the NJC was included in Article 25 of the Fundamental Law.

147. It is clear that the Hungarian authorities wished to keep the figure of the NOJ President, whose legitimacy rests solely on his election by parliament, and to confine the body of judicial self-government, the NJC, to a subordinate role. The failure to restore a proper balance between the powers of the NOJ President and those of the NJC has had detrimental consequences in practice, raised not only by GRECO but also by the Commissioner for Human Rights, the Venice Commission and the European Commission. The NJC thus has only a limited role in judicial appointments. The procedure for appointing ordinary judges to permanent

---

277. CDL-AD(2012)001, paragraph 23.
278. The authorities recalled that, at the end of 2010, there was an attempt to reform the prior model by reorganising its system of "checks and balances" by transferring more decisive power to the President of the National Council of Justice (who was then, *ex lege*, the president of the Supreme Court (at that time Mr András Baka). This reform (and concentration of power within the judicial administration system) was backed by a large political consensus (only 16 out of 386 MPs voted against). "However, this system proved to be ineffective in a short term, as the President of the Supreme Court was also the President of the NCJ so he was parallelly responsible for ensuring the uniform application of the law by the courts and for the management of the central administration of the court system." As explained by the NOJ in the comments, the system was changed in 2011: it separated the management of the judiciary from the central administration of the court system (President of the Curia and President of the NOJ) and the central administration from its supervision body (President of the NOJ and NJC). AS/Mon (2021) 09 rev – comments II.
279. Greco Eval IV Rep (2014) 10E, paragraph 95.
280. The names of these institutions vary according to source and are sometimes translated as "National Judicial Office" or "National Judicial Authority" (for the NOJ) and "National Council of Judges" (for the NJC).
281. Article 25 (5) of the Hungarian constitution states that "The central responsibilities of the administration of courts shall be performed by the President of the National Office for the Judiciary. The National Judicial Council shall supervise the central administration of courts. The National Judicial Council and other bodies of judicial self-government shall participate in the administration of courts."
282. Hungary – Opinion on the amendments to the Act on the organisation and administration of the Courts and the Act on the legal status and remuneration of judges CDL-AD(2021)036.
283. CDL-AD(2012)001, paragraph 50.
284. CDL-AD(2013)012, paragraph 71.
285. Ibid., paragraph 69.

posts[286] is initiated by the president of the relevant court, notified to the President of the NOJ – who decides whether to allocate or not the vacant post – and conducted by a panel from this court. The latter ranks shortlisted candidates using a points system. This system, established by the Minister of Justice, was amended by decree in 2017. As a result, the President of the NOJ has the power, firstly, to change the order of the candidates on the shortlist, with the NJC having to give its consent if the ranking order is different for the candidates in second or third place, and, secondly, to declare a procedure unsuccessful even though there is a candidate heading the shortlist. This legal situation led GRECO to recommend in 2015 that the powers of the President of the NOJ to intervene in the process of appointing and promoting candidates for judicial positions be reviewed in favour of a procedure where the NJC was given a stronger role. This recommendation (Recommendation viii) has not been implemented to date, which is regrettable. In this respect, NGOs note that "the relevant regulations do not provide appropriate and sufficient legal and institutional guarantees against the NOJ President's potential abuse of authority and discretion".[287]

148. The power imbalance between the presidents of the NOJ and NJC was recently highlighted very strikingly with regard to this issue of appointment of judges, especially court presidents. The European Commission and the Council of Europe's Commissioner for Human Rights both reported that the NJC criticised the President of the NOJ in 2018 for breaking the law by annulling procedures for selecting court presidents and by exercising her discretion to appoint acting court presidents without the approval of the NJC. Having initiated various procedures and applied unsuccessfully to various institutions, including the President of the Republic, the President of the Curia and the President of the Association of Judges, the NJC as a last resort requested the parliament to remove the President of the NOJ in May 2018. Parliament rejected this request in June 2019. At the same time, the President of the NOJ initiated disciplinary action against one NJC member without first requesting the opinion of the NJC itself as required by Law CLXI on the organisation and administration of courts in Hungary. The disciplinary procedure eventually did not take place, as the NJC had not given its consent.[288] This dispute was to some extent resolved with the election of a new NOJ President by parliament in December 2019. Nevertheless, these events have shown that, in terms of organisation, the NJC is unable to make its views heard in the event of conflict with the NOJ President and that it was a political institution, in this case parliament, that acted as the ultimate arbiter in a dispute that was supposed to concern the judiciary alone.

149. The Venice Commission, GRECO and the Commissioner for Human Rights had also underlined the threat to the principle of irremovability of judges – an important aspect of their independence – because the NOJ President had the power to force the transfer of a judge.[289] This mandatory transfer, which can be ordered every three years, can last up to a year. It was intended to ensure "an even distribution of the workload between courts". The Venice Commission and GRECO have found the "even distribution" criterion too vague, and GRECO has noted that the threat of transfer from one court to another could be used to bring pressure on a judge and also ensure that a particular judge would deal or not deal with specific cases in a court. The Hungarian authorities have improved the management of this mandatory transfer procedure.[290] They told GRECO that between 2012 and 2015 no judges had been transferred against their will, and the NOJ also stressed that since its existence in 2012, no judge had been transferred without his/her consent, and that these transfers were only temporary.[291] However GRECO recommended in 2015 that the power of the President of the NOJ to reassign ordinary judges without their consent be reduced to a minimum in time and only for precise and particular reasons of a temporary character. In 2020 it considered that this recommendation (Recommendation x) had not been implemented, which was regrettable.

150. Over and above the power imbalance within the judiciary, which threatens its independence, a second topic of concern is the power of appointment that the Hungarian Parliament exercises at the apex of the judiciary. This single-chamber parliament uses a two-thirds majority voting system to appoint the fifteen judges of the Constitutional Court, including its President, the President of the Curia and, as already mentioned, the President of the NOJ. On the face of it, the need for a two-thirds majority ought to guarantee that these appointments are made with the consent of part of the opposition. But since 2010 the parliamentary majority has had over two thirds of the seats. As noted by the Venice Commission in 2012, "The first President of the

286. Officially, ordinary judges are appointed by the President of the Republic on the proposal of the NOJ President.
287. Contributions of Hungarian NGOs to the European Commission's Rule of law report, op. cit.
288. Comments by the NOJ, AS/Mon (2022) 09 rev – comments II.
289. CDL-AD(2012)001, paragraphs 76-79; CDL-AD(2012)020, paragraphs 54-56; Greco Eval IV Rep (2014) 10E, paragraph 119; and CommDH(2019)13, paragraph 99.
290. Between the above two Venice Commission opinions, the Hungarian authorities clarified the criterion for mandatory transfer, limited the consequences for judges if they refused a permanent reassignment proposed by the NOJ President, and provided for a judicial review of transfer decisions.
291. Comments by the NOJ, AS/Mon (2022) 09 rev – comments II.

NJO was indeed elected with the votes of the governing parties, which have a two-thirds majority. During the visit of the Commission delegation to Budapest, the representatives of the opposition parties informed the delegation that they did not vote for the candidate due to her close links with leading Fidesz politicians."[292] This was the President of the NOJ who was at odds with the NJC until 2019, as mentioned above. The large number of appointments made by parliament with a two-thirds majority also attracted the Venice Commission's attention. As early as 2011, in its opinion on the new Constitution of Hungary, it stated, "The more policy issues are transferred beyond the powers of simple majority, the less significance will future elections have and the more possibilities does a two-thirds majority have of cementing its political preferences and the country's legal order." [293] This observation also applies to appointments, particularly for high judicial office and especially when they cover terms that are much longer than those of members of parliament (four years). This is the case for the presidents of the NOJ and Curia, whose terms of office are nine years, and for the members of the Constitutional Court, who are appointed for twelve years.

151. A third topic of concern relates to the criticisms levelled at judges and courts by politicians belonging to the majority or by Hungarian media outlets close to it.[294] Both the European Commission and the Commissioner for Human Rights of the Council of Europe in their 2020 and 2019 reports respectively point to this unwelcome trend, already discernible in the Baka case mentioned in section 4.1 above. The European Commission makes reference to the survey conducted by the European Network of Councils for the Judiciary in 2019, which revealed that 40% of the judges surveyed had experienced a lack of respect for their independence by the government and the media.[295] It also mentions the government's announcement in February 2020 that it was going to organise a national consultation on certain justice-related issues – in practice connected with certain criticisms of court rulings. This announcement was not subsequently followed up, but it prompted a negative reaction from the Bar Association and the Association of Judges, which feared that such a consultation might undermine public trust in the justice system, which is already low: in its 2021 Rule of Law report, the European commission states that the perceived independence of courts and judges by the public opinion in Hungary was only of 40% in 2021, against 48% in 2020.

152. The Commissioner for Human Rights also drew attention to the Prime Minister's reaction, on 5 May 2018, after the Curia upheld a decision by the National Election Commission to invalidate several thousand ballots during the parliamentary election. The Prime Minister stated that the Curia had "clearly and grossly interfered in the elections" and "taken a mandate away from our electors".[296] Further referring to the above-mentioned Committee of Ministers' Recommendation on judges, the Commissioner highlighted the principle set out in paragraph 18, according to which, if commenting on judges' decisions, the executive and legislative powers should avoid criticism that would undermine the independence of, or public confidence in, the judiciary. Lastly, quite clearly in the Baka case, in which the former President of the Supreme Court was removed from office because of his criticisms of certain government laws and bills affecting the judiciary, the Committee of Ministers noted in 2019, seven years after the event, "the reports suggesting that the 'chilling effect' of the violation found by the Court under Article 10 [of the Convention] and affecting the freedom of expression of judges and court presidents in general has not only not been addressed but rather aggravated".[297] In their reply to the 2019 report of the Commissioner for Human Rights, the Hungarian authorities were of the opinion that the ruling from the European Court of Human Rights had been fully implemented.

153. This approach is however not shared by the Committee of Ministers, which continues to supervise the implementation of this ruling. In its interim resolution of 9March 2022,[298] the Committee of Ministers recalled the need to prevent an *ad hominem* constitutional-level legislation terminating a judicial mandate but noted at the same time that since the completion of the constitutional reform in 2012, no similar violations had occurred or would occur (in light of a declaration of the Minister of Justice to the Committee of ministers). However, it strongly urged the Hungarian authorities to introduce the required measures to ensure that a decision by

---

292. CDL-AD(2012)001, footnote 20.
293. CDL-AD(2011)016, paragraph 24.
294. The authorities stressed that not only politicians from the political majority criticised the courts and their decisions. As an illustration, they cited the decision of the NOJ President rejecting two statements made by one ruling politicians (MEP) and one opposition mayor (and prime minister candidate of the allied opposition) "because they went beyond the bounds of free expression". Comments by the NOJ and the authorities, AS/Mon (2022) 09 rev – comments II.
295. SWD(2020) 316 final, p. 4, footnote 21.
296. Press release published on 7 May 2018 on the Prime Minister's official website: "Curia has grossly interfered in elections".
297. CM/Del/Dec(2019)1355/H46-11, paragraph 7.
298. Interim Resolution CM/ResDH(2022)47, Execution of the judgment of the European Court of Human Rights Baka against Hungary, adopted by the Committee of Ministers on 9 March 2022 at the 1428th meeting of the Ministers' Deputies.

parliament to impeach the President of the Curia will be subject to effective oversight by an independent judicial body in line with the European Court's case law, as well as to evaluate the domestic legislation on the status of judges and the administration of courts and present "the conclusions of their evaluation, including of guarantees and safeguards protecting judges from undue interferences, to enable the Committee to make a full assessment as to whether the concerns regarding the 'chilling effect' on the freedom of expression of judges caused by the violations in these cases have been dispelled".

### *5.4. Recent changes introduced in the judicial system*

154. During our visit to Budapest, we had very informative meetings to understand the complex functioning of the justice system. We met the President of the Curia, the President of the National Judicial Council and the President of the National Office of the Judiciary as well as other stakeholders (the Association of Hungarian Judges (MABIE) and the Res Iudicata Association) as well as NGOs. We thank the authorities for the comments provided on these issues. In December 2020, a package of legislative and constitutional provisions had raised some questions. The Monitoring Committee therefore requested an opinion from the Venice Commission, which issued its opinion on the changes pertaining to the judiciary in October 2021.

155. The Hungarian justice system has good rates in terms of efficiency and quality, as depicted by the Council of Europe European Commission for the efficiency of justice (CEPEJ). This was also confirmed by the European Commission in its 2022 Rule of law report, which reported that Hungary performs very well as regard estimated time to resolve litigious civil and commercial cases. A new law was enacted in January 2022 on pecuniary compensation for delay in civil proceedings (but not in administrative or criminal proceedings) in case of violation of the fundamental right to have a civil proceeding completed within a reasonable time.[299] For the authorities, this high efficiency demonstrates the level of independence of the judiciary.[300]

156. We need however to take a wider look at the functioning of the judicial system to assess its independence. Important reforms were adopted in 2019, allowing members of the Constitutional Court, who were elected by parliament, to request appointment as Curia judges without going through the ordinary application procedure. This procedure provides that candidates who have replied to a call for applications and been shortlisted by the NJC be appointed by the President of the Curia. The 2019 reform allowed members of the Constitutional Court to request appointment to the Curia at the end of their term of office. As the European Commission puts it, "As a result, in practice, the election by Parliament to the Constitutional Court, which does not entail the involvement of a body drawn in substantial part from the judiciary, can in itself lead to the appointment as a judge of the Curia if requested by the judge concerned." This is a situation that the European Commission considers to be at odds with the recommendation of the Committee of Ministers of the Council of Europe on judges: independence, efficiency and responsibilities.

157. In January 2021, a new President of the Curia was elected by the parliament, despite the negative (non-binding) opinion of the NJC (which rejected this candidature by 13 votes against 1, notably for his lack of practical legal experience)[301] and the criticism voiced by the opposition. The UN special rapporteur on the independence of judges and lawyers stated that this appointment "may be regarded as an attack on the independence of the judiciary and as an attempt to submit the judiciary to the will of the legislative branch, in violation of the principle of separation of powers". The Hungarian Government replied that there was no consideration of political nature when appointing the President of the Curia.[302]

158. The Venice Commission observes that the regime of appointment of the President of the Curia introduced by the 2019 amendments could pose "serious risks of politicisation and important consequences for the independence of the judiciary, or the perception thereof by the public, considering the crucial role of this position in the judicial system", adding that limited guarantees of independence apply after the appointment, given that "the President of the Curia can be dismissed or disqualified from office upon a simple majority decision of the parliament "if considered unworthy of office due to some action, or acts committed or omitted" – a vague and weak criterion for removal from office".[303]

---

299. SWD(2022) 517 final.
300. AS/Mon (2021)09rev – comments II.
301. "Judiciary Council Rejects Nominee for Top Court Head, DK to Turn to EC Over Nomination", Hungary Today.
302. "UN judge independence rapporteur concerned over Hungary top court choice", EURACTIV.com.
303. Opinion on the amendments to the Act on the organisation and administration of the Courts and the Act on the legal status and remuneration of judges adopted by the Venice Commission at its 128th Plenary Session (Venice and online, 15-16 October 2021), CDL-AD(2021)036.

159. Concerns were also expressed by the judicial stakeholders and NGOs met in Budapest about the possibility for members of the Constitutional Court (who are appointed by parliament with a two-third majority) to become, without any judicial experience, and without the involvement of the NJC, members of the Curia, which could make the system open to undue interference. As a matter of fact, nine Constitutional Court members have obtained the status of judge and have been appointed as Curia judges since 2020, one of them is the current President of the Curia, András Varga Zs. Mr Varga served as a judge at the Constitutional Court until his appointment as President of the Curia that took effect on 1 January 2021.[304]

160. The authorities dismissed the above concerns on the ground that "members of the Constitutional Court practice *de facto* judicial activity" and that they "may not be members of political parties or engage in political activities either. Besides, having been a member of government or a leading official in any political party or having held a leading State official's position in the four years prior to election shall disqualify persons from becoming members of the Constitutional Court. Thus, a member of the Constitutional Court who may become a judge at the Curia, did not carry out high-ranking political activities at least four years before his/her election and during his/her mandate as a member of the Constitutional Court and similar safeguards of independence have applied to him as in case of ordinary court judges".[305]

161. The Venice Commission however, in its opinion of 2021, recommended to the authorities to adopt a cautious approach on this topic, noting that "the nature of the judicial function is different at constitutional courts as compared with supreme (ordinary) courts. In particular, the system of appointments to constitutional courts is usually more open to political considerations than ordinary courts. This does not mean that the appointment of a judge from a constitutional court to a supreme court is dangerous or unacceptable; it only means that it opens the door to a potential politicisation of the supreme court, and the approach should therefore be cautious.[306]

162. The December 2020 package also included changes in the (complex) allocation of cases, allowing the President of the Curia to decide that a five-judge chambers shall hear and determine certain categories of cases, instead of the usual three-judge composition. The Venice Commission considered that this solution could be suitable, but advised "to determine in the law itself what are the criteria for increasing to five the number of judges sitting in the panel for certain types of cases" and to make the opinion of the relevant college and the judicial council public and binding for the President of the Curia in order to ensure the transparency of the process and increase the trust of the citizens in the good and impartial functioning of the judiciary, given the reported complexity of the case allocation system."[307] NGOs noted that in 2021 in a number of sensitive cases "the composition of the adjudicating panel was not in line with the case allocation scheme".[308]

163. The uniformity procedure – whereby the Curia makes uniformity decisions which are binding on courts – was another issue of concern raised by the stakeholders met in Budapest. They feared that such case law would lead to an interpretation of the law influenced by the President of the Curia. The Venice Commission considered that "the task of the Curia to unify case law is not problematic in itself. In fact, it is a rather common power of supreme courts to unify case law of ordinary courts and to render judgments with binding precedential force even in continental legal systems". However, "it is important to emphasise that any unification competence of the Curia must comply with fundamental principles of the separation of powers. It should certainly not be the competence of any court's president alone to select areas in which case law should be unified authoritatively. Furthermore, even after the Curia's unifying decision, all courts and judges must remain competent to assess their cases independently and impartially, and to distinguish new cases from the interpretation previously unified by the Curia. In other words, if later cases are different enough, judges must be able to decide them differently, in all independence and impartiality".

164. The Venice Commission also issued a number of recommendations related to the composition of uniformity complaint chambers. It recommended to increase the number of judges sitting in this chamber and to remove the prerogative of the President of the Curia to mandate temporary presiding judges or at least to eliminate any margin of discretion in their selection (the uniformity complaint panel is chaired by the Curia President or Vice President; its eight members are selected by the chair).[309] It also advised to abolish the possibility to adopt the authoritative type of uniformity decisions that still persist (uniformity decisions on questions of principle with the aim to further develop the interpretation of the law).[310]

---

304. Ibid.
305. AS/Mon (2021)09rev – comments II.
306. CDL-AD(2021)036.
307. Ibid.
308. Contributions of Hungarian NGOs to the European Commission's Rule of law report, op. cit.
309. CDL-AD(2021)036.

165. Further to this opinion, the European Commission reported that the parliament amended on 1 March 2022 the rules of uniformity procedure, renamed it "preliminary reference procedure in the interest of uniformity of law" and specified when the uniformity procedure can be applied.[311] The amendment did not abolish the possibility to adopt the binding uniformity decisions but parties to the proceeding may lodge a uniformity complaint against a final decision of the Curia if it deviates from its published case law. The Curia President also amended the case allocation scheme on 1 January 2022 to set up two uniformity complaint panels, each composed of the Curia President and Vice President and 19 senior Curia judges.[312]

166. Another issue of concern for stakeholders relates to the appointment procedures of judges and their effective judicial protection in case they are found unsuitable for tenure by court presidents after their initial period.[313] Questions were also raised about the power of the NOJ President to cancel a call for applications (without possibility to challenge the decision), the fact that all vacated judicial posts are not published and that the NOJ President has extensively used the exceptions allowed by the law to fill a vacancy without a call for applications. These exceptions include the possibility for the NOJ President to reassigned judges ending their secondment to other State bodies outside the judiciary.[314] The 2020 amendments extended the powers of the NJO President to second all judges – and not only administrative judges – to State bodies (subject to approval by the head of the given institution and by the presiding judge) and "to assign those judges back to judicial positions which may be also higher than the original placement of that judge. This way, judges may be "promoted" to higher judicial functions by a decision of the NJO President".[315]

167. Lack of access to data about the temporary transfer of judges decided by the NOJ President and eventually their appointment to higher positions were a matter of concerns for the NJC and seen as a way to circumvent the guarantees of judicial appointment in regular application procedures[316] which could lead to arbitrary decisions. In this respect, the Venice Commission has recommended to set up "clear, transparent and foreseeable conditions for the seconded judges to be assigned to a higher position after the period of secondment.[317]

168. While the Venice Commission welcomed in 2021 the continued increase of salary of judges and prosecutors[318], our interlocutors were concerned by the discretionary powers of the NOJ President and court presidents to allow bonuses to judges. The NJC complained that it had been unable to obtain data from the NOJ about these bonuses. This lack of transparency, and the absence of clear criteria on the basis of which these funds are allocated, fuel fears of selective attribution of resources and could lead to self-censorship of judges. This is another illustration of the weak supervision of the NOJ by the NJC.

169. Finally, we had noted that rules governing the removal of the Prosecutor General had been changed; an amendment to a cardinal law was adopted on 18 November 2021 – by a two-thirds majority, and it requires a two-thirds majority vote in parliament to remove the Prosecutor General from office. This rule will apply to the incumbent Prosecutor General, elected for nine years in 2019, whose mandate could even be extended afterwards, despite the recommendations made by GRECO.

170. We cannot but be alarmed at the tendencies that have been at work in the judicial system for a number of years now. We invite the Hungarian authorities to continue their dialogue with the Council of Europe. As shown above, this dialogue has allowed progress in the past. More recently, in 2019, it allowed the suspension of controversial bills designed to create a separate legal order in the area of administrative law. Within this dialogue, we invite the Hungarian authorities to strengthen the self-governance of the judicial system, guarantee its independence more effectively, refrain from undermining the standing of its judges and courts and respect the former's freedom of expression.

310. Ibid.
311. See details in SWD(2022) 517 final, p.8 and footnotes 49 and 50.
312. SWD(2022) 517 final.
313. The European Commission referred to a draft legislative proposal made by the NOJ President in agreement with the NJC on 13 June 2022 to amend the rules governing the appointment of judges after their initial period. SWD(2022) 517 final.
314. SWD(2022) 517 final.
315. CDL-AD(2021)036.
316. SWD(2022) 517 final.
317. CDL-AD(2021)036.
318. Ibid.

## 6. Concluding remarks

171. Since its accession to power in 2010, the coalition of the Hungarian Civic Alliance (Fidesz) and the Christian Democratic People's Party (KDNP) has won four consecutive parliamentary elections and enjoyed, nearly continuously, a two-thirds parliamentary majority, which constitutes a unique situation among Council of Europe member States and contemporary democracies.

172. In 2011, Hungary adopted a new Constitution. In 2013, the Assembly declared itself "deeply concerned about the erosion of democratic checks and balances as a result of the new constitutional framework in Hungary" which has introduced "excessively concentrated powers and increased discretionary powers". The Assembly reiterated its concerns in 2015, 2017 and 2018.

173. For more than a decade, the ruling coalition exerted power within this constitutional framework, making use of these concentrated and discretionary powers and legal means to implement, unopposed, profound changes to the legal and political system. These developments have, over time, seriously challenged the functioning of democratic institutions and brought Hungary further afar from Council of Europe's standards:

– In the field of electoral law, electoral conditions that are in full compliance with European standards are needed to ensure fair elections and allow voters to keep faith in their electoral system and its ability to change parties in power. However, the recent changes in the electoral law have further reduced the fairness of the electoral processes and thus reduced the ability of the system to safeguard political pluralism and foster political alternatives;

– While the country has an efficient justice system especially in civil and commercial cases, it still needs to strengthen its independence to prevent any risk of politicisation, especially when dealing with administrative and electoral cases. The problem of excessive concentration of powers within the judiciary has not been addressed since 2012, and further reforms touching the appointment procedure of members of the Curia have opened the door to a risk of politicisation;

– Media should be able to operate in an open and fair environment. The uneven allocation of State advertising – at the benefit of pro-government media – seriously impacts media pluralism. The concentration of the media market and the creation of the media conglomerate KESMA in 2018 have further deteriorated the overall conditions for media. The appointment procedure of the Media Council needs to be reviewed in order to ensure the pluralism of its composition, effectively involving various political forces;

– More determined efforts are needed to establish legal frameworks that ensure transparency and accountability of State institutions. Progress achieved in fighting money laundering and financing of terrorism, in compliance with MONEYVAL recommendations, are to be commended and should inspire the authorities to address other deficiencies, notably in the fight against corruption, following GRECO's recommendations.

174. Combined with a two-thirds majority enjoyed nearly continuously by the ruling coalition, these reforms have put in question the very functionality of Hungary's democratic system. In 2011 already, when analysing the Hungarian Constitution, the Venice commission had warned that "functionality of a democratic system is rooted in its permanent ability to change. The more policy issues are transferred beyond the powers of simple majority, the less significance will future elections have and the more possibilities does a two-thirds majority have of cementing its political preferences and the country's legal order".

175. A decade later, one must acknowledge that the two-thirds majority required to enact cardinal laws, appoint high officials or amend the Constitution, instead of pushing the ruling coalition to establish a broad consensus, was widely used to cement political options beyond the term of mandate given by the electorate in each election. It ensured that a very large number of laws cannot ever be changed again by another majority unless it has two-thirds of the votes in parliament. Moreover, it has left little space for meaningful deliberation or consensus building, thereby abusing the spirit of the laws and the Constitution.

176. It is regretful that parliamentary oversight on core government issues has been reduced. If many countries declared special legal orders to cope with the Covid-19 pandemic, few have maintained them for so long. The Tenth amendment to the Constitution, tailor-made to be triggered by the war in Ukraine, has further allowed the government to rule by decree in vast areas, preventing the parliamentary opposition to fulfil its role and contribute to the public debate. This, in fact, has taken legislative functions out of parliament through special emergency decrees.

177. The recent creation of “public trust funds”, by virtue of a constitutional change, exemplifies this trend, resulting in important transfer of wealth – up to 2% of GDP – from essential public assets, such as universities and hospitals, to these funds. Yet they are managed by board members appointed for a lifetime by the government – who are widely regarded as supporters of the ruling majority – without any oversight by the State audit or rules governing the prevention of conflict of interests. This has resulted in State institutions being transferred to non-State bodies which are controlled by the ruling party, outside the public sphere.

178. Over the last years, concentration of powers intensified – in the field of media, judiciary, local government, education – public oversight was hindered, media pluralism deteriorated, and serious deficiencies have undermined the transparency and accountability within the institutions.

179. The undisputed exercise of power by the same coalition since 2010, has, over time, in the current constitutional framework, significantly reduced the efficiency of the system of checks and balances. It has also cemented the political system through the strengthened influence of the ruling coalition on State bodies and key independent institutions This is leading the country to face a serious risk of a permanent capture of State institutions by one party and the creation of a clientelist-based system, which is shrinking the democratic arena.

180. Despite this restrictive environment, it is important to recognise the existence of an active parliamentary opposition as well as vibrant civil society organisations that should normally contribute, in an effective and democratic way, to decision-making processes. Building on the authorities’ declared commitment to democratic values, we believe that Hungary can restore the necessary conditions for a pluralistic, democratic society and for the respect of rule of law, in co-operation of the Council of Europe monitoring bodies and the Venice Commission if the authorities wish to do so.

181. In conclusion, in light of these long-standing issues that remain largely unaddressed by the authorities, we propose to the Assembly to use the means at its disposal to closely follow the developments with regard to the functioning of democratic institutions and the rule of law in Hungary.